

THE CONSUMER REPORTING REFORM ACT OF 1993—S. 783

Y 4. B 22/3: S. HRG. 103-247

The Consumer Reporting Reform Act o... **RING**

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

S. 783

TO CORRECT ABUSES INVOLVING CREDIT REPORTING SYSTEMS, DENY-
ING CONSUMERS JOBS, CREDIT, HOUSING, AND THE RIGHT TO CASH
A CHECK

MAY 27, 1993

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



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THE CONSUMER REPORTING REFORM ACT OF 1993—S. 783

THURSDAY, MAY 27, 1993

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met at 10:05 a.m., in room SD-538 of the Dirksen Senate Office Building, Senator Donald W. Riegle, Jr. (chairman of the committee) presiding.

OPENING STATEMENT OF CHAIRMAN DONALD W. RIEGLE, JR.

The CHAIRMAN. The committee will come to order.

Before we begin our formal hearing this morning, I want to note for the record that the committee is voting on reporting the following legislation:

S. 422, the Government Securities Act Amendments; S. 50, the Jefferson Commemorative Coin Act; S. 183, the Red Skelton Commemorative Gold Medal Act; and S. 216, the World University Games Commemorative Coin Act.

If there is no objection to proceeding in this manner, the period for voting will begin now and will extend until this hearing ends.

If a quorum of Members arrives to cast their votes in that time, the bills will be reported in due course to the full Senate.

I ask unanimous consent that the staff be allowed to make technical and conforming amendments and that we waive the Cordon rule. Is there objection?

[No response.]

The Chair hears none and it is so ordered.

I thank my colleagues. I also want to say that I appreciate the help yesterday, particularly from our Republican colleagues, with respect to the nominees for the Department of Housing and Urban Development.

Let me now make a brief opening statement. Then, I want to go to Senator D'Amato, and then Senator Sarbanes, who needs to speak and then go to another hearing. Then we'll go in order down the table.

Today, the committee will hear the views of the Federal Trade Commission, the State Attorneys General, consumer advocates and representatives of the credit provider and credit reporting industries on the Consumer Reporting Reform Act of 1993.

I was pleased to join Senators Bryan and Bond as an original cosponsor of this legislation, which is designed to correct abuses involving consumer credit reports. I want to commend both Senators

for their leadership in addressing the serious problems that face the current credit reporting system.

The credit reporting industry is currently regulated by the Fair Credit Reporting Act, which was enacted back in 1970. However, the Act badly needs modernization and updating in light of changing business practices.

As a result of those practices, consumers have frequently been denied jobs, credit, housing and even the right to cash a check, because of errors in their credit reports.

Businesses can often look at consumers' credit reports without their permission and consumers do not have adequate access to their reports in order to correct errors that may be there.

The Federal Trade Commission reported in 1991 that it received more complaints about credit-reporting companies than any other American industry. A study by Consumers Union revealed that 48 percent of credit reports reviewed, contained inaccurate information and almost one-fifth contained major errors.

The legislation we consider today differs from the bill offered by Senators Bryan and Bond in the last Congress in two notable respects. First, the bill would not pre-empt State laws that are more protective of consumers. Second, the bill would not require credit bureaus to furnish customers with free reports every other year. Both these changes were made to respond to concerns that were raised in debate last Congress.

Consumers would be able to buy homes and to borrow money based on a fair and accurate assessment of the credit histories. At the same time, their privacy should not be invaded by people who seek access to their credit reports for improper purposes.

I think this bill will go a long way toward achieving those goals and we have important witnesses here today that I'll be introducing a little later.

Senator D'Amato.

OPENING COMMENTS BY SENATOR ALFONSE M. D'AMATO

Senator D'AMATO. Mr. Chairman, I'd like to ask that my various statements be entered into the record as if read in their entirety. I'd also like to thank this committee for the speedy mark-ups that we have been able to undertake today.

With respect to the Consumer Reporting Reform Act, which is being sponsored by my colleagues, Chairman Riegle, Senator Bond and Senator Bryan, I want to commend my colleagues for their hard work on this legislation. Certainly, I think there's need for some reform.

I might also suggest, and Senator Bond and I have discussed this, that we look at the issue of a Federal pre-emption, and the need for uniformity. This is a somewhat controversial issue. However, if we want to do the job, we have to do it the right way. We need to be fair. We must see that it is properly protected, and we should not impair the availability of consumer credit.

This is a difficult issue. It is appropriate that we have a hearing to consider the issue of Federal pre-emption in this legislation.

Again, I commend my colleagues for undertaking a very thankless job.

Thank you, Mr. Chairman.

The CHAIRMAN. Very good. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Thank you very much, Mr. Chairman.

Mr. Chairman, unfortunately, I'm not going to be able to stay through this hearing this morning because I have another commitment as, of course, is often the case here in the Senate. But I did want to just say a few words of welcome to the Attorney General of the State of Maryland, who will be testifying on the first panel, Joseph Curran, and speaking to the problems associated with consumer credit reports and to S. 783, the Consumer Reporting Reform Act of 1993.

Attorney General Curran is here testifying on behalf of the National Association of Attorneys General. The State of Maryland, under his leadership, and the Consumer Protection Division of the Attorney General's office, has taken a leadership role in the Nation in the area of fair credit reporting.

I'm very pleased that Joe Curran, who is an old and dear friend and an outstanding public servant, is here this morning to testify before the committee. I know his testimony will be very much to the point.

The issue of fair credit reporting is an important one and I want to compliment the sponsors of the legislation, Senators Bryan and Bond, and the Chairman, for the work they've done in framing this legislation.

I look forward to working with them on this very important issue. There have been a number of abuses, in effect, violations of people's privacy, which need to be addressed by this committee. And I commend the sponsors and again, I welcome Attorney General Curran. We're very pleased to have him before the committee this morning.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Sarbanes.

This will proceed a little bit out of the normal order, but I'm now going to call on Senator Bryan, who is the chief sponsor, and then Senator Bond, who is working with him in partnership, so that they can make their opening comments.

I just want to say to both of them, and particularly to you, Senator Bryan, how much I appreciate the time, leadership and the extra effort that you have made on this issue. I think it's important to the country and very much appreciated by the committee and by me.

OPENING STATEMENT OF SENATOR RICHARD H. BRYAN

Senator BRYAN. Mr. Chairman, let me express my appreciation to you for your cosponsorship, as well as this timely hearing, and also, to say to my colleague, Senator Bond, that his efforts and that of his staff have been instrumental in getting us to where we are at this stage of the proceeding.

Credit financing has become such an integral part of our economy, that it's hard to imagine our lives without it. So much of our economy is driven by credit purchases, that we may see the day in our lifetime when businesses actually discourage cash transactions. Given this growing importance of credit financing, we must do ev-

everything that we can to ensure the credit reporting system is as accurate as possible.

The United States has the finest credit reporting system in the world. The credit reporting industry in this country maintains 450 billion credit files and sells over 1.5 million credit reports each and every day.

The credit reporting industry estimates that errors occur in only five-tenths of 1 percent of all the Nation's credit reports, while consumer groups estimate error rates are as high as 48 percent. In any event, millions of Americans are affected by erroneous information contained in their credit reports. This Senator has had a personal example of that situation.

This legislation takes a number of important steps that should greatly reduce the frequency of inaccurate credit reports, thereby saving millions of Americans the anguish and frustration resulting from erroneous credit reports.

This morning, we will hear two main arguments advanced against this legislation. First, we will be told that the provisions in this bill are already being implemented. Second, that this legislation will have a chilling effect on the supply of information to credit bureaus. For reasons that I will outline briefly, both of those assertions are incorrect.

It is true, many of the provisions of this legislation are being carried out by the credit reporting industry today as part of their consent agreements with the Federal Trade Commission and 20 of our Nation's Attorneys General.

But those that argue that we do not need to do more because of the consent decrees currently in place ignore a vital part of the process. Those institutions that supply information, that furnish credit information, play an important part of the process and yet, are not subject to the provisions of any consent decree.

Including furnishers of information like banks and retailers in the Fair Credit Reporting Act is a crucial part of improving the accuracy of the credit reporting system. No matter how careful and diligent the credit bureaus are, if the information provided to them is faulty, individuals will suffer the consequences.

In our computer age, we all understand—garbage in, garbage out.

This legislation has been carefully crafted so that it should not, in my judgment, inhibit the flow of information to credit bureaus. It recognizes that if information is cut off, the consumer ultimately will be the loser.

That is why Senator Bond and I have provided for a delicate balance between providing incentives for providers to provide accurate information, while not discouraging them from providing information because of the threat of potential liability.

We will also hear today that the legislation is a litigator's dream come true that could have the effect of closing down the free flow of consumer credit information which allows our credit economy to flourish.

To the contrary, the legislation goes to great lengths to see that this does not happen. The furnisher of information would be exposed to liability for failure to correct an error after reasonable notice. Furnishers for information would not be liable for the routine

mistakes that naturally occur when processing millions of data entries each and every month.

S. 783 does not contemplate perfection, just good faith efforts to supply accurate information. Business will not be subject to private causes of action or nuisance suits when they file information with a credit bureau. If, however, they fail to correct a mistake after reasonable notice, individuals would be able to take appropriate legal action.

I believe this represents a careful balance between the free flow of information and the need to improve accuracy. There are too many lives that can be adversely affected by inaccurate credit reports, not to make every effort to improve our system.

Even as we speak, people are being turned down for student loans, car loans and mortgages. People are being turned down for jobs or promotions, all because of faulty or inaccurate information on credit reports.

While we will never eliminate human error or computer error, for that matter, from the credit reporting process, I believe we can and should do better, and S. 783 paves the way.

Mr. Chairman, I thank you for your comments and thank you for the timely hearing.

The CHAIRMAN. Thank you very much, Senator Bryan.

Senator Bond, let me again say how much I appreciate the bipartisan work done here and particularly your involvement.

OPENING STATEMENT OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman.

We very much appreciate your holding the hearing today and having you as an original cosponsor is vitally important to us. Again, I extend my very personal and sincere thanks to Senator Bryan for taking the leadership on this measure this year.

We did have, I thought, a good bill last year, but when similar legislation was derailed in the House of Representatives, our bill was not considered in the Senate.

For those of you who may be joining this operation for the first time, I can only say that we heard sufficient horror stories last year and learned of significant concerns that require, in my view, Congress to act.

I think that the Fair Credit Reporting Act is ripe for revision. The act was written long before computer technology was as sophisticated as it is today. These technological advances have meant a drastic increase in the amount of information that can be kept on individuals, and that's you and me.

The horror stories discussed at the previous hearings, as I've indicated, were quite compelling. I believe that the current law simply does not do the job of adequately protecting consumers.

I think Congress should address the concerns about accuracy in the system and the need for consumer privacy.

With respect to the contention that the consent decree has established the guidelines and taken care of the need for this, I happened to be old-fashioned. When it comes to legislation, I think Congress ought to do it. I do not favor judicial legislation, even by consent decrees. I think we get paid for making legislative determinations. I have never been comfortable with the thought that we

turn over legislative decisions to the courts, regardless of are, whether it is through a judicial order or through the adoption of a consent decree.

On the other hand, I congratulate and thank the credit bureaus for taking steps to make the system more accurate. I encourage them to move forward in that area. I still feel that legislation is needed. I assure you that we are going to listen very carefully to the concerns of all the witnesses today.

We see there is a need to move in this area. If our bill does not address particular areas properly, or if there are good reasons why there should be changes, we want to hear them.

I think that there has been broad agreement about most of the provisions in S. 783, but, as has already been stated, last year, there was loud and contentious debate about whether State laws on this subject should be pre-empted by a new Federal statute.

This debate over Federal pre-emption ended up causing the bill to be defeated on the House floor last fall. I think that we should apply a uniform Federal standard to govern credit reporting, which is why Senator Bryan and I last year introduced pre-emption of State laws.

Nevertheless, in an effort to move this urgently needed legislation, Senator Bryan and I have agreed to drop the Federal pre-emption provisions and the section allowing a consumer a free credit report every other year.

These two provisions of the bill drew the most criticism last year, so we have modified the bill as introduced in the hope of moving it.

I personally prefer a bill with Federal pre-emption and free credit reporting. And as we move through the legislative process, I hope that with our colleagues, we can work on these provisions and also hear from those affected, as well as the regulators, to discuss their concerns.

We are willing to strip the bill of those controversial provisions in the interest of securing a compromise, but I hope that all of the contending factions—I could say warring factions, but I hope it's not quite that far—the contending factions will look carefully at our suggested compromise and work with us to find ways it can be improved, rather than letting FCRA reform slip through our fingers again this year.

I think it would be a shame and irresponsible for Congress to adjourn this year without reforming this statute to protect consumers. I look forward to hearing the comments of the witnesses, Mr. Chairman, and I thank you again for holding this prompt hearing.

The CHAIRMAN. Very good. Let me ask unanimous consent to insert in the record now a statement from Senator Dodd, who is in the process of chairing another hearing and cannot be here. I should also acknowledge that Senator Moseley-Braun had to go to another hearing and will return later.

Senator Faircloth.

OPENING STATEMENT OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you. Thank you, Mr. Chairman.

I want to welcome the witnesses to the hearing and I look forward to the testimony.

I certainly praise Senator Bryan and Senator Bond for the bill and the work they've done on it. I only have the the almost continuing thought that I have about any new legislation when we're considering a new bill, and I'm sure that the bill is needed, and the provisions are.

But before we get carried away, I want to just point out that the taxpayers, the business people, and the consumers who buy things at the store will ultimately pay the cost of the legislation, just as they pay the cost of all Government regulations.

A recent study by Dr. Thomas Hopkins, professor of economics at the Rochester Institute of Technology, puts yearly paperwork and compliance cost of Federal regulations at \$500 billion, \$5700 per household every year just for complying with regulations.

So what I want to know from the witnesses is simple—how much is the bill going to cost? How many more regulations will be needed to enforce it? And let's level with the people that somebody has to pay for everything we enact here.

Thank you.

The CHAIRMAN. Thank you very much, Senator Faircloth.

Let me now invite our first two witnesses to the table who will constitute our first panel, Mr. David Medine and the Honorable Joseph Curran, Jr. I'm going to make a few introductory comments about both of them.

As they're being seated, let me also indicate who the members of our second panel will be.

They will be: Mr. Barry Connelly; Michelle Meier; Robert Hunter; Mr. Ed Mierzwinski; and Mr. Ronald Prill. We'll give descriptions of their backgrounds and vantage points when they come forward.

David Medine is the Associate Director of the Credit Practices Division of the Federal Trade Commission, which is responsible for enforcement of the Fair Credit Reporting Act. We welcome him this morning.

Mr. Curran is the Attorney General of the State of Maryland, as Senator Sarbanes has said, and is here testifying on behalf of the National Association of Attorneys General, which includes, among others, your senior colleague, my home State Attorney General, Frank Kelly, who has been in office 31 years and elected nine times.

I know you'll be speaking for him and the others in your testimony. We welcome you both and we'll make your full statements a part of the record.

Mr. Medine, we'll start with you, and we'd like your summary comments now.

STATEMENT OF DAVID MEDINE, ASSOCIATE DIRECTOR, CREDIT PRACTICE, FEDERAL TRADE COMMISSION, WASHINGTON, DC

Mr. MEDINE. Thank you, Senator.

Mr. Chairman, and Members of the committee, my name is David Medine. I am the Associate Director for Credit Practices of the Federal Trade Commission's Bureau of Consumer Protection.

I am pleased to have this opportunity to present the Commission's views on possible remedies for the problems that consumers experience in their dealings with the consumer reporting

industry, and to comment specifically on S. 783, the Consumer Reporting Reform Act of 1993, which amends the Fair Credit Reporting Act.

The principle underlying the FCRA when it was first enacted in 1970, was to ensure that this country's consumer reporting system would function fairly, accurately and efficiently, without unwarranted intrusion into consumers' privacy. That principle is even more important today because technology and computers can provide instant access to vast amounts of credit-related information on consumers.

The challenge today is two-fold—to ensure that our laws are adequate to protect consumers' privacy in the face of an ever-escalating technological revolution, and to ensure that the increasing amount of financial information compiled on consumers is accurately reported.

The importance to consumers and creditors of accurately reported credit history information can hardly be underestimated. Creditors view credit history as a key indicator of credit risk, and so it is important to consumers who pay their debts in a timely fashion that their reports accurately reflect their good payment histories. It is equally important to creditors that the decision to accept or decline a credit application be made on the basis of accurate information. Only one or two items of adverse information can transform what would otherwise be an acceptable report into one that is unacceptable.

Thus, a high level of accuracy in consumer reporting is important if the system is to function fairly and usefully.

Over the past several years, the Commission has been very active in enforcement of the existing Fair Credit Reporting Act. The Commission has engaged in FCRA enforcement actions against large employers who have allegedly denied employment to job applicants based, in part, on consumer reports, but who failed to disclose that fact to the applicant, as required by the FCRA, along with the name and address of the consumer reporting agency that supplied the report. This year, the Commission finalized consent agreements with three information brokers or resellers and issued an administrative complaint against another in order to address the procedures these consumer reporting agencies must follow when providing reports to mixed-use users, such as private detective agencies and attorneys. On the issue of marketing, the Commission recently issued an administrative complaint against Trans Union Corporation challenging its alleged use of credit-related information to compile and distribute target marketing lists and entered into an agreement with TRW to abandon use of all credit-related information from its consumer reporting database in creating target marketing lists.

One of the Commission's most significant actions occurred in 1991, and it involved TRW Inc., a company which maintains information on approximately 170 million consumers, and is one of the three major consumer reporting agencies operating nationwide. In this enforcement action, the Commission worked closely with a group of 19 State Attorneys General in entering into parallel Federal and State TRW consent orders, resolving the separate Federal

and State actions voluntarily. The Commission's consent order focused primarily on issues of privacy and accuracy.

The Commission believes that the TRW consent order will do much to improve the accuracy of TRW's reports. However, the Commission's enforcement efforts are subject to the limits of a law that was enacted 20 years ago. Although that law provides a framework for enforcement action, as evidenced by the TRW consent order, there is no question that the law could be more effective than it is at present.

An updated law could strengthen enforcement capabilities and also, by clarifying the responsibilities of the consumer reporting industry, foster improvements in consumer reporting that could reduce the need for formal enforcement action. Despite the entry of the TRW agreement and similar State agreements with Equifax and Trans Union, there is still a need to amend the FCRA. The Commission's enforcement powers should be enhanced and some legal responsibility placed on those third parties who report information to consumer reporting agencies to ensure the accuracy of the information reported. In addition, many smaller consumer reporting agencies in this country are not subject to any governmental orders and are, thus, regulated solely by the existing FCRA. Finally, changing technology and business practices have created a need to update this statute.

The Commission previously has supported legislative proposals to strengthen the FCRA that it will better protect the accuracy and privacy of information reported by consumer reporting agencies. The Commission continues to believe that legislation to amend the FCRA is warranted, and we commend you for your efforts in this regard. The proposed bill includes many provisions that would strengthen the FCRA significantly and that the Commission would be pleased to see enacted. Turning now to S. 783, in the limited time I have available, I would like to highlight some of the legislative reforms supported by the Commission that are specifically in this bill:

- The bill enhances the commission's enforcement powers by giving it the ability to obtain civil penalties against those who violate the law;
- It imposes a standard of care on those who furnish information to consumer reporting agencies;
- It provides the Commission authority to bring an enforcement action whenever anyone impermissibly obtains access to a consumer's credit report;
- It increases privacy protections when resellers of consumer reports provide them to mixed-use users;
- It expands the FCRA's notification provisions so that whenever consumers are denied benefits based on their credit report, they receive a notice indicating the name of the credit bureau that provided the report;
- It ensures that consumer reporting agencies maintain records enabling consumers to identify persons who have obtained copies of their credit reports;
- It mandates written disclosure of all information in consumers' files;

- It requires that consumer reporting agencies develop disclosure forms which are more uniform and easily understood by consumers;
- It imposes a 30-day time limit for credit bureaus to reinvestigate items disputed by consumers; and
- It forbids credit repair organizations from charging or receiving any money prior to the completion of the services that they have agreed to perform for consumers.

Mr. Chairman, that concludes my prepared remarks. I appreciate the opportunity to appear here today. I would be pleased to answer any questions you may have.

The CHAIRMAN. Thank you very much. We appreciate those comments and we'll pursue that a little bit later.

Let me now call on Attorney General Curran. We're pleased to have you, and we'd like to hear from you now.

**STATEMENT OF J. JOSEPH CURRAN, JR., ATTORNEY GENERAL,
STATE OF MARYLAND, BALTIMORE, MD; ACCOMPANIED BY:
WILLIAM LEIBOVICI**

Mr. CURRAN. Thank you, Mr. Chairman.

I'm indeed very pleased to be here on behalf of not only the National Association of Attorneys General, but also, the citizens of the State of Maryland, to personally thank you and Senator Bond and Senator Bryan for the excellent work you've done in the preparation of this bill.

I've asked Mr. Bill Leibovici of our consumer protection division to be here with me, since it is we at the State level who actually hear first-hand, in the trenches, if you will, the consumer inquiries and the consumer complaints, whether they be in Maryland or Michigan or Missouri or wherever.

We want to share with you what we believe generally are solutions to what could be described as a complex problem.

I think that with S. 783 and our few suggestions we've been able to arrive at an appropriate balance. For that reason, I want to share my views and ideas with you and I hope that it will play a role in the success of this particular proposal.

There was a time many years ago now in which credit financing was only used when one purchased a home. Other transactions were, in the main, by check or by cash, but it was the credit financing of one's home that was used to ascertain whether the mortgagor was going to obtain prompt payment.

Now, however, that's greatly changed. In my study of this particular proposal, I've learned that you and I, as consumers in America, use approximately 900 million credit cards out there in this country, which is an indication of how far we've come and that credit transactions are, indeed, a way of life. Everything from soup to nuts, automobiles to appliances are now, of course, obtained on credit.

And therefore, it's terribly important to both the consumer and to the business person that these credit transactions be accurate.

I want to believe that the credit reporting agencies do provide a very valuable service to both the businesses and the consumers by maintaining a credit history on these millions upon millions of Americans who have these cards. They obviously reduce the need

of a business person to conduct independent research on the credit-worthiness of the applicant. So that's a plus.

And at the same time, it permits the consumer to expeditiously obtain the needed credit that he or she wants. So, again, that's a plus and we applaud that process.

When the Congress initially examined this problem back in the late 1960's, it did rightfully conclude that the Federal Government had a role to play in establishing standards of conduct for the credit reporting agencies. Those standards remain today as I think they did back at that time, which is that we simply want to make sure that there's accurate information, that it's current information, and that it's confidential information.

Those were the standards intended by the Fair Credit Reporting Act.

We've come to learn from the consumer protection division and also from our agency dealing with consumer credit, that in the time that the law has been enacted, there is indeed outdated information and there is also inaccurate information in credit reports that hurts both the consumer and the business person.

If a business person gets wrong information about a consumer and denies the transaction, the business person is hurt. He loses the sale. He loses the profits from that sale. And that's wrong and that's bad. At the same time, of course, the consumer who wanted that transaction, he or she loses out.

Let me share with you three principles that I think ought to flow through the concept of what you're doing here today and in the next several weeks.

First of all, I believe there is a role for us in the States, and Mr. Kelly in Michigan and elsewhere, all the other attorneys general, to play.

I do believe we have a role to play. I do believe also the Federal Government has a role to play. I think that your energy and our energy and your resources and our resources can work together. In other words, we need not go separate ways.

So I do believe, quite frankly, that we both have a role to play and that it would be appropriate for the Federal Government to establish a floor with respect to minimum standards for the credit reporting industry to follow, but to permit the States to build on that floor if they want to for additional protections.

And also, I honestly believe that the most realistic way to assure accuracy of my credit information is for me to have the chance to review it. I, and I alone, primarily know whether or not I'm paying my bills.

If the consumers had a role to play, if they could see their reports, if they could see the information, there wouldn't be the inaccurate information being shared that would be of detriment to them and also a detriment to the business person.

So I think the second leg of this system would be to permit consumers to be involved in it, to let them know. And we in Maryland and in Vermont do that.

Finally, I also want to share with you, that I honestly believe that it's wrong to have my credit information shared without my approval. The idea that I should have to take affirmative steps to

opt out to prevent the release of that information, I think is wrong. If I want that information, I can opt in.

When I apply for a loan or a transaction, I have a reasonable expectation that my credit information, my credit background, will be known by the provider of the goods or services. I understand that.

But I don't think it's fair for my information to be used by other marketing services who may determine that I am either a good or a bad risk, unless I agree to that. I just think that's wrong, and I would urge that any transaction here permit me to opt in rather than to opt out. The advantage ought not go to the person who's using my name. I should have that advantage.

We in Maryland and in Vermont, I might add, Mr. Chairman have a different law than what is before you here. We like our law. We'd like to keep our law. I'm sure Vermont would like to keep its law.

And so, the point I'm strongly suggesting is to continue, if you will, sir, the fact that there will not be the State pre-emption. We are the closest to the people. We have been innovative. We've made changes. We've responded. And it's a lot easier for us to handle our transactions and make appropriate legislative revisions in Maryland than it is, say, to come to you and the FTC folks.

Therefore, let consumers have copies of their reports. That's a plus. Permit us to build upon your floor. That's a plus. And finally, my information and your information ought to be sacrosanct and secret, unless I want it released. The biggest complaint we get in Maryland is all this junk mail that comes in by the millions—congratulations! You may now get this. Or congratulations! You're on this list.

If I want to get that, I should be able to say, yes, send me that information.

But, actually, I think from a business standpoint, I'm a more valuable customer if I agree to let folks know that I'm a good credit risk rather than I'm just on a mailing list somewhere. It's of no benefit to me to be on a mailing list in which I get all this mail. It's only a benefit to the marketing person, the telemarketing persons. So they ought to ask my permission. When I say me, I obviously mean all consumers.

And they're the three points we want to make. Thank you very much for this law and we encourage its passage.

The CHAIRMAN. Very good. Thank you.

Mr. Medine, I have a couple of things I want to raise and then will proceed to the two principal authors of this bill.

In recent years, the credit bureaus have entered into a series of agreements with the FTC and the attorneys general of numerous States. The industry has also taken a series of voluntary steps to address consumer concerns. Based on that, some are now suggesting that legislation is really no longer necessary. How do you respond to that?

Mr. MEDINE. We continue to believe that legislation is necessary for a number of reasons.

We do applaud the industry's efforts to improve the accuracy and privacy of information and would encourage the industry to continue along those lines.

It is also the case that there are many provisions in the consent orders that we believe improve the operation of the credit reporting system.

I would note, though, that those consent orders go only so far as existing law permits. What the Commission's proposals and the other proposals consider today, as well as other things in S. 783, indicate is that there are additional features that should be added to the law that cannot be covered by those consent agreements. And so the bill essentially goes further than the consent agreements and adds some needed improvements to the credit reporting system.

In addition, of course, if the law simply incorporated what those consent agreements provided, then there would be no additional burden on those bureaus because they would have to comply with the consent agreements, anyway.

And finally, I would say that there are many credit bureaus in this country that are not covered by those consent agreements. We all know, of course, about the big three credit bureaus, but there are many smaller affiliates of the big three and there are more specialized credit bureaus that deal with mortgage issues, that deal with medical information, that are not subject to any consent agreements and whose accuracy should be kept at the same standard as everyone else's.

The CHAIRMAN. Mr. Curran, what is your reaction to that question?

Mr. CURRAN. Well, I'm in favor of the highest possible standards being placed on the reporting agencies, standards that would be imprinted in Federal law. That's what we should look to, the statutory resolution of this issue.

We were not a party, I might add, to the consent agreement, not because we don't appreciate what has been done, but we had more involvement in our own State law, which, I might add, gives us even a greater degree of protection than does the consent order.

But I just think that, as one who served in the legislature some-time back, let's establish at the highest level of Government, which is the statutory language, what protections we want to give our consumers. And do it by State law and Federal law, not by a judicial determination.

The CHAIRMAN. Now, Attorney General Curran, this version of the bill does not contain the controversial provisions that pre-empt State laws that are more protective, which stalled our bill last year. Do you think we were wise to delete the pre-emption provision?

Mr. CURRAN. Yes, sir.

[Laughter.]

Very wise.

[Laughter.]

The CHAIRMAN. I think that was about as short and clear an answer as we've ever gotten here from any witness.

[Laughter.]

So you set a very good example.

Senator Bryan, let me now yield to you and again say how much I appreciate the effort that you've been leading here.

Senator BRYAN. Mr. Chairman, thank you very much.

Mr. Medine, let me follow on with the line of questioning which the Chairman began; namely, the need for this legislation in that it covers credit bureaus that are not currently subject to the consent decrees, and the providers, the furnishers of the information.

Can you share with us, give us any comforting assurance? The business community that has raised the concerns here which we anticipate in the testimony, is that, gosh, it's OK to cover the credit bureaus, but the providers of credit, they shouldn't be covered.

No system would be complete, No. 1, would it not, if you did not cover the providers of the credit? Actually the credit bureaus themselves do not originate the information. They simply collect it and then provide it to retailers and others who make use of it in making the determination whether to extend credit. Would you develop that a little bit for me?

Mr. MEDINE. Certainly. As you indicated in your opening statement, the credit reporting system relies on the accuracy of each step of the transfer of information. That is, the bureaus themselves are under a statutory mandate to do the best job they can in assuring the accuracy of that information. It can only be as accurate as the information that is given to them by the people who report to them, such as creditors and others.

If the information that comes into the system is inaccurate, what goes out is most certainly going to be inaccurate. So that is why the Commission has had a long-standing view that creditors ought to be under some legal responsibility for the quality of the information that they report to the credit bureaus.

But I would want to emphasize that we do not intend to impose a liability standard on them that will discourage them from reporting information in the future. What we're asking for is that there be reasonable procedures in place so that they take appropriate steps to make sure that the information is accurate.

But let me just tell you a little bit about the Commission's enforcement policy, which I think would give some comfort to the affected parties.

The Commission does not go out and sue someone every time a single mistake is made. The notion of the Fair Credit Reporting Act is that you're dealing with huge volumes of information, and no one expects perfection.

What's expected here is that you do a reasonably good job under the circumstances using the available techniques, whether it's computers or accounting procedures or whatever.

And only in situations where we see that there's a pattern or a practice of violations are we going to bring an enforcement action.

So, if the industry is concerned about the single mistake being made and that we will jump on it, that's not the case. However, if the single mistake is an indication of a wider problem that's affecting larger numbers of consumers, then it's appropriate that they be subject to an enforcement action.

I would also comment on civil penalties which would be available under this legislation.

The Commission has taken a very moderate and reasonable view about civil penalties. They ought to be set at a level that has some impact on the business so it's an incentive for them and others to comply with the law. But they're never going to be set at a level

that's going to put anyone out of business or cause them to withdraw from the very valuable credit reporting system on which many of these companies rely in learning of credit information and making their credit decisions.

So we think that this is a balanced approach and I would say our estimate would be that most companies are already in compliance with a reasonable procedures standard for the information they report.

This would simply put an added burden on those who perhaps are a little bit sloppier than they should be to tighten up their procedures. But we don't think this would impact on the vast majority of creditors today who do report information accurately and correctly.

Senator BRYAN. In your experience, isn't one of the most serious problems that consumers face is that information, albeit, innocently, is erroneously included in the credit report. The individual contacts them and says, look, I'm not the person. It's not me. You've made a mistake.

Currently, under the system, there's virtually no way to get that out to be sure that it's out. And the testimony that we've had before this committee and other hearings that were held out in Nevada, intervening years occurs and application is again made for credit. An individual who has credit extended to him or to her in the past believes that the erroneous information has been withdrawn or excised from the file, finds that the problem presents itself again.

Could you share with me what your experience has been in terms of dealing with customers and their problems?

Mr. MEDINE. I think you put your finger on one of the most frustrating problems that consumers have. They find a mistake on their credit report typically because they've been denied credit. They follow their statutory rights in disputing that information with the credit bureau. They succeed in having that information taken off. And, as you suggest, they're surprised months or years later to see that the information has found its way back on the report.

We believe the responsibility really lies two places for that problem—one, the credit bureau and two, the credit grantor who is reporting the information to the credit bureau.

There are provisions in our order with TRW that would prevent TRW from rereporting that incorrect information in the future. But the responsibility really lies with the credit grantor that is reporting that information back to the credit bureaus.

Again, I think this bill would go a long way toward making sure that that does not happen by requiring that the credit grantors maintain procedures that, once an item is deleted from someone's file, it not be rereported to the credit bureau.

Senator BRYAN. Thank you very much.

Attorney General Curran, just one question before turning to Senator Bond for his questions.

In looking at the way Senator Bond and I have crafted this legislation, we've provided opportunity for the States' Attorneys General to have the ability to enforce regulations that are promulgated pursuant to this.

In looking at the structure and the relationship that we've created from an attorney general's point of view, do you have any comments at all as to whether or not we've hit the target from your perspective directly or—

Mr. CURRAN. I think, Senator, you have hit the target. At last count, there were 20 States, including Maryland, of course, that have their own laws. But that would mean that there are 30 who do not.

Therefore, the ability of the attorney general in those 30 States to exercise the authority under the Federal law would be of benefit to them, without the necessity of having their own legislature enact a law. So that's a plus.

Also, it would be my thought that it would help us in multi-State litigation where we could have better jurisdictional authority.

I would say that it is appropriate. We've worked well with your Federal law to sanction those who have violated the Federal odometer law. In fact, just very recently, we've collected for Marylanders half a million dollars using in Federal court your Federal law in the odometer act.

So it's one example. I may be able to find others. But one example where we have successfully used at the State level the Federal law. I think the same thing could be appropriately said here.

Senator BRYAN. General, thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Bryan.

Senator Bond.

Senator BOND. Thank you very much, Mr. Chairman.

Mr. Medine, would you address the differences between the provisions of the consent orders entered into with TRW and S. 783? Do you feel that we should include some of the other provisions of the consent order in the legislation? Or do you feel, that in the interest of uniformity, our legislation ought to pre-empt the consent order and establish a single playing field for all agencies?

Mr. MEDINE. That's a somewhat difficult question to answer because there are so many provisions in the consent order and so many provisions in the statute, that it would take quite a while to go over each one.

Senator BOND. What are the major differences you see between them?

Mr. MEDINE. Well, the consent order goes into quite some detail relating to mixed file errors and requires special procedures to try to prevent those, along the problem that Senator Bryan was alluding to earlier.

There's nothing in this legislation that specifically addresses that, although one could argue that the existing legislation already addresses that and this is a response to TRW's problems in the past of perhaps mixing files up improperly.

There is a mandate in the consent agreement that disputes be resolved in 30 days, which this legislation follows, which is a plus.

I guess I would like to say that there are many similarities. And so, I don't think that there is a big problem with inconsistency. And in fact, the TRW order itself says that if Congress were to pass inconsistent requirements, that those would supercede the order.

We anticipated that Congress might well amend the Fair Credit Reporting Act. We did not want to put TRW at a disadvantage that a new legal standard imposed by Congress would force it to do things that other companies wouldn't do. We have already basically taken that problem into account.

I guess I don't think that's a real problem. There may be additional, what we call, fencing-in procedures that deal with particular violations in the past that we think it's important to have in there. But I think, by and large, I don't think you're going to have the problem of an inconsistent playing field.

Senator BOND. Is there anything in the bill which you believe is inadvisable, anything in the draft, anything that you would recommend changing?

Mr. MEDINE. There's certainly nothing, no big picture items that we would recommend changing. There may be some tinkering with some of the standards that are set in the bill. But in terms of the big picture items, we support what this bill aims to accomplish.

We do differ somewhat on the question of State enforcement. We think it's important that Federal precedent be set by a Federal agency that takes into account all of the issues in the country and the impact of development of the law as it applies to the national perspective. A State might have a different focus and might pursue a legal theory that would be helpful in its particular case, but might set a bad precedent for the larger playing field, as it were.

I should add, we've worked very closely with the States. We've worked extraordinarily closely on the TRW consent agreement, even sitting at the same table with the States and TRW to work things out. We have no problem working with the States, enforcing their law, while we enforce our law.

Senator BOND. Wouldn't that same argument extend to the question of Federal pre-emption? Wouldn't you, by the same logic, say that the one law ought to apply nation-wide?

Mr. MEDINE. I can't answer that question because the Commission hasn't been presented with that issue. This bill does not include a pre-emption provision in it and so, the commission has not taken a position on that question.

Senator BOND. But you have just made the argument for Federal pre-emption.

[Laughter.]

Mr. MEDINE. Well, it was unintentional.

[Laughter.]

Senator BOND. All right.

Mr. MEDINE. I should add, though, that we did work with the States, though, in enforcing their laws and our law and that was a compatible relationship.

And so, I don't think it necessarily follows that the standard has to be the same. We're just saying that there should be one enforcement agency for the Federal standard and the States could enforce their own standard, and that both could be operating at the same time.

Senator BOND. Let me turn now to Attorney General Curran. As one who formerly was in charge of a consumer protection division of an attorney general's office, I understand somewhat the modes in which you operate. I have long been a strong opponent of Fed-

eral pre-emption in areas where the States can and, rightfully, do, exercise judgment protection for their citizens. But, at the same time, credit reporting today seems to be an essential element, essential foundation for interstate commerce.

You've heard our friend from the FTC talk about the need to have uniformity. There are contentions that will be made very forcefully by succeeding witnesses who say that the inconsistency of legislation State by State may significantly burden the provision of credit on an interstate basis and across the Nation.

There's also a contention that the safety and soundness of the banking system, of which we are all quite sensitive in this committee, I assure you, would be compromised by a series of different State standards and regulatory enforcement mechanisms. How do you address those two considerations?

Mr. CURRAN. Well, conceptually, I can't really argue that there is not wisdom in uniformity, particularly when we have commerce, of course, all across this Nation. So that is certainly a desirable goal.

Having said that, I can speak as, indeed, you, Senator, have understood, that those of us at the consumer protection division of the attorney general's office in our individual States, we're closer to that scene and we hear firsthand very quickly and forcibly many times the concerns of a business person who is distressed or a consumer who is upset.

So I think that some of our own laws in Maryland or in Vermont, really, I'd like to see at the national level, for instance, this idea that all 200 and some odd million Americans have the benefit annually of a review of their particular reports. That would assure, as we have in Maryland, the chance that it would be accurate in the first instance.

So I think anything we do, being closer to the people, hearing more often from them, is better. And so, our Maryland law, we think is a good law. Our Maryland law also provides that when the consumer is informed that the credit reporting agency has determined that information disputed by the consumer is accurate, the credit reporting agency must, upon request, provide the consumer with the name and the phone number of each person contacted by the agency in its reinvestigation of the information.

Many times they'll simply say, well, you're turned down because the bank said that you were a bad credit risk, or you couldn't get this appliance because your credit information was improper.

But now, we're able to say you can call Mr. Bond at such and such phone number—so I think that those kinds of things are far better.

Senator BOND. Granted, the States have been the great laboratories of experiment. You found out what's good. But is there a reason why, in national commerce, someone who is providing credit or making credit sales nationally, shouldn't make the same good protections and the same information available on a national basis? You've got Maryland companies soliciting people in my State, in Michigan and Nevada, and I know you've got companies in Missouri that are soliciting business in Maryland. And I'd urge you to look at it. They've got some great merchandise coming in.

But shouldn't the same standards apply? If it works at the State level, shouldn't you be giving us the benefit of your vision so that we can establish a uniform system?

Mr. CURRAN. I could not really disagree with that, that the good ideas that are developed across the 50 States be eventually incorporated so they're national standards. But the States are still developing those good ideas. Everyone loses if we deny the States the opportunity to engage in these experiments.

It may well be that in Missouri or Michigan or elsewhere, that they don't want the Vermont standard. The Vermont standard is, of course, that, in Vermont, before the credit reporting agency can release the information, they have to be given permission by the consumer.

That may be a bit restrictive for some, but that's what Vermont folks want and that's what they're entitled to get. Again, it gets back to the privacy. How much privacy do you want to get and give? And I'm very much a defender of that privacy.

I'd like to see the national Government adopt our standards. But if the national law cannot incorporate it, we would say, in Maryland and in Vermont and perhaps in other innovative States down the road, let us have a chance to do for our citizens what we think is best for them.

That's really where we're coming from. And obviously, as a States person, we jealousy guard our right to provide for our citizens and, I concede, sometimes maybe we sound unreasonable. But we think that we're following fine precedent by giving us the chance—we know best our people, I guess is what we'd like to say.

Senator BOND. Thank you very much, General.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Bond.

If there are no further questions of these two witnesses, I'm going to now thank you for your testimony, and excuse you. Your testimony has been very helpful to us.

Mr. CURRAN. Thank you, sir.

Mr. MEDINE. Thank you.

The CHAIRMAN. As our next panel is coming forward, let me introduce each of them and give a description of the vantage point from which they come.

Mr. Barry Connelly is the executive vice president of the Associated Credit Bureaus, a trade association representing the consumer credit, mortgage reporting and collection service industries.

Ms. Michelle Meier has covered credit issues for the past 9 years at Consumers Union, the publisher of Consumer Reports magazine.

Mr. Robert Hunter is an executive vice president of Chase Manhattan Bank. Mr. Hunter is testifying on behalf of the American Bankers Association, the American Financial Services Association, the Consumer Bankers Association, Mastercard International, and VISA, Incorporated.

Next is Mr. Ed Mierzwinski, the consumer program director with the U.S. Public Interest Research Group, a national lobbying office for a network of State public interest organizations.

Finally, Mr. Ronald Prill, who is the vice president of credit at Mervyn's, and he is testifying on behalf of the National Retail Federation.

Let me welcome all of you today. We'll make your full statements a part of the record, and we'd ask each of you to make your summary comments in about a 5-minute time period.

I will shortly be asking Senator Bryan to come over and to chair the remainder of this hearing, as I must go in due course over to the Senate floor.

Mr. Connelly, we'll start with you. We're pleased to have you and we'd like your comments at this time.

STATEMENT OF BARRY CONNELLY, EXECUTIVE VICE PRESIDENT, ASSOCIATED CREDIT BUREAUS, WASHINGTON, DC

Mr. CONNELLY. Thank you, Mr. Chairman.

On behalf of the 1,000 consumer credit mortgage credit-reporting members of Associated Credit Bureaus, I wish to thank you for the opportunity to present testimony on proposed amendments to the Fair Credit Reporting Act. My name is Barry Connelly and I'm the executive vice president of Associated Credit Bureaus.

I'm reminded, Senators, that I was in this room 24 years ago, almost to the day when Senator Proxmire and Senator Bennett held hearings on the original Fair Credit Reporting Act.

Remarkably, in our view, the FCRA, with a few exceptions, has met the test of time and reacted well to the technological changes in our business.

The bipartisan goal of the Senate Banking Committee 24 years ago was to strike a reasonable balance between consumer rights and the free flow of consumer information. The end product was not punitive, but it provided meaningful consumer protections.

Since then, the U.S. economy has grown steadily and the availability of credit to buy homes, cars and household products has afforded millions of your constituents a standard of living second to none.

The option to buy on credit was made possible by the availability of fast, accurate credit history information from the Nation's credit reporting industry. Without the availability of the credit history information from U.S. credit bureaus, it could never have happened. The surge of new home buying and mortgage refinancing could never have been accomplished without the information from the Nation's credit bureaus.

It is with those facts as a backdrop that Congress must consider any changes that would inhibit the flow of information.

This Congress and this administration pledge to create more jobs. The extension of consumer credit creates real jobs, and credit history information is what makes it possible for a family in Nevada to buy a car built in Michigan.

Mr. Chairman, this is not said in an attempt to dismiss the criticism of our industry or to minimize the problems that some consumers have experienced with credit bureaus.

My written statement describes in detail how ACB members have listened to our critics and we've reacted positively to improve our service to consumers.

If you compare S. 783 with our new industry initiatives, you will see immediately that we listened and we learned. We are not the industry we were 2 years ago and nothing productive will come from a rehash of old issues.

Our message is two-fold—first, the credit reporting industry is an integral part of the U.S. economy and we must be very careful to disrupt the free flow of information upon which credit decisions are made, while assuring American consumers of legitimate privacy and accuracy.

Second, we are a progressive industry responding to the needs of consumers and credit-grantors through significant mandatory industry initiatives.

Senator Bryan, Mr. Chairman, I would like to ask that, for the record, these initiatives be entered into the record.

Senator BRYAN [presiding]. Without objection, the initiatives will be made a part of our record.

Mr. CONNELLY. Thank you, sir.

Let me just put to rest some lingering issues as you listen to testimony and consider changes in the FCRA.

In the area of privacy, ACB members do not want anyone who does not have a permissible purpose to have access to credit reports. Our initiatives tighten the relationship between broker-resellers in the credit bureau to minimize the opportunity for someone to invade a consumer's privacy.

Senators, rather than make a folk hero out of a Business Week reporter who broke two Federal laws in obtaining Dan Quayle's credit report, why didn't the Justice Department prosecute him? That's what should have occurred.

Let's talk about accuracy.

It is the goal of our members to achieve and maintain credit reports which are free of any errors. We have invested millions of dollars in improved computer programs to assure that matched data minimizes the chance of mixing files.

The industry is testing the automated consumer dispute verification system that will utilize an electronic mail system to send a correction or change in a consumer's account to all three nationwide systems.

You will find a new and improved attitude in consumer service. Each company is trying new ways to communicate better with the consumer. There is a healthy competition to see who can do better.

Disclosure formats are more readable. A consumer disclosure will be mailed to the consumer within 3 business days. Reinvestigations will be completed within 30 days.

And finally, sir, Congress was told that the FTC had received up to 10,000 complaints or inquiries about credit bureaus in 1991. Either the Commission's calculation of complaints and inquiries was in error, or we improved dramatically in 1992.

You see, ACB filed a Freedom of Information Act request with the FTC for all complaints and inquiries in the first quarter of 1992.

They produced 373 actual complaints, which represents one complaint for every 370,000 reports sold. Or we could say that there was a decrease of 85 percent from the previous year's complaints.

Mr. Chairman, in conclusion, S. 783 would have an impact on the consumer credit industry, but not necessarily a positive impact. The flow of consumer credit information from credit grantors would be jeopardized.

ACB and its members are not proposing a legislative solution. It's not secret, in the last Congress, we actively supported H.R. 3596, as it was reported to the House floor. Unfortunately, our efforts were in vain, but the pitfalls and problems associated with the legislative process causes us to resist when faced with a similar situation in this Congress.

We are thankful that we are achieving the desired results with our initiatives where the legislative process, in fact, failed last year. We are convinced that the risk of destroying the balance achieved 24 years ago is just too great.

Thank you for the opportunity to summarize my full statement and I look forward to answering your questions.

Senator BRYAN. Thank you very much, Mr. Connelly. As the Chairman indicated, your full statement will be made a part of the record.

Ms. Meier, we'll hear next from you.

STATEMENT OF MICHELLE MEIER, COUNSEL, GOVERNMENT AFFAIRS, CONSUMERS UNION, WASHINGTON, DC

Ms. MEIER. Thank you very much.

I am pleased to appear before this committee and to have the opportunity to say, hi, and thank you to our cosponsors, Senators Bryan and Bond.

I have four points to make today.

No. 1, that voluntary efforts, despite the claims of the industry, making some of these voluntary efforts are not enough. The need for the legislation is the same as it was 3 or 4 years ago when this issue first came to broad public attention.

No. 2, that pre-emption hopefully is behind us. I think we found out last year with the death of the bill on the House floor that this bill is doomed if a pre-emption provision is put into it.

No. 3, that the bill provides, S. 783, provides a good start for addressing the problems in the market place. But Consumers Union and other consumer groups will be working both in the committee here, the Senate, and the House, for some additional reforms that we think are essential.

And No. 4, after 3 or 4 years of discussing this issue, and after a year or two of having most of the needed reforms put together with little controversy surrounding them, let's go. Let's get the legislation passed.

Just to emphasize a couple of these four points.

On the voluntary efforts, I have not systematically gone through the consent agreements and gone through the voluntarily efforts that have been committed to outside the consent decrees. But I think that it's clear that there are a number of reforms included in S. 783, or its House counterpart, that are not addressed by industry voluntary efforts.

For example, neither the House or Senate bill, or the consent agreements and the voluntary efforts don't do anything toward addressing the problems with banks and other businesses that regularly supply information to credit bureaus. We think that is an essential reform that can only be addressed by Congress.

The free report issue is not resolved in the consent agreements or in any other voluntary efforts. We see that as a critical reform.

The direct marketing issue under which companies buy lists of names of consumers cold from credit bureau files is not satisfactorily dealt with in the consent agreements.

The enforceability of the consent agreements is not the same as what we could achieve with Federal legislation. Only the States, only the parties to the consent agreements can enforce violations of the agreements, whereas, Federal law gives consumers who are victimized by violations and States across the board the ability to enforce violations.

The final point on the voluntary efforts issue is that this issue, the need for reform legislation and I think the general agreement that reform legislation is needed, only has come about because of the spotlight of public attention on the many problems and the horror stories.

We think without Federal legislation resolving these problems, reforming the market place, that these voluntary efforts will not stick, hold a huge risk of simply going away as soon as the spotlight of publicity dims.

I think I'll leave it like that. Our testimony goes into the key two or three issues that we would like to see addressed in this legislation. And if questions come up on that, I'll get into them at that point.

Thank you very much.

Senator BRYAN. Thank you very much, Ms. Meier. We appreciate your testimony.

Mr. Hunter, we'll hear from you next, sir.

STATEMENT OF ROBERT HUNTER, EXECUTIVE VICE PRESIDENT, THE CHASE MANHATTAN BANK, N.A., NEW YORK, NY

Mr. HUNTER. Thank you, Mr. Chairman.

My name is Robert Hunter. I'm an executive vice president of the Chase Manhattan Bank.

Today, I'm appearing here on behalf of the American Bankers Association, the American Financial Services Association, the Consumer Bankers Association, Mastercard, and VISA.

Needless to say, we appreciate the opportunity to testify before the committee. In addition to my oral statement, we request that our written testimony be included in the hearing record.

Our industry understands the concerns that have been expressed about the effectiveness of the FCRA. In particular, we fully appreciate the need for accurate credit files and credit reports.

Our industry depends on accurate credit information. We also recognize the importance of consumer access to their files and the need for readily understandable credit information.

Since Congress began focusing on this subject, however, these concerns have been largely addressed through State and Federal regulatory efforts. In particular, the Nation's three major credit bureaus, representing the consumer reporting industry, have entered into the consent agreements, that have already been mentioned, with State and Federal officials, which require extensive changes to the way the industry does business. We believe that these efforts address the principal reasons the committee is considering FCRA legislation.

Accordingly, we strongly urge the committee to very carefully examine these developments before enacting Federal legislation. By waiting until the credit reporting industry has had an opportunity to fully implement the changes required by the consent agreements, the committee can then more precisely determine the appropriate refinements that may be needed for the FCRA.

The sponsors of S. 783 are to be commended for focusing attention on consumer reporting concerns and for attempting to develop compromise positions with respect to many of these challenging issues.

Any FCRA legislation must be carefully crafted to balance the interests of consumers, credit bureaus and creditors alike. Such a delicate balance is much more likely to be achieved after fully considering the impact of the recent consent agreements.

If the committee, nevertheless, pursues FCRA legislation, we strongly urge that the FCRA be established as the national uniform standard for credit reporting to avoid inconsistencies with State laws.

Inconsistent State law requirements create operational problems which make it difficult to accomplish the goals the bill is intended to address, including the completion of reinvestigations in the shortest possible timeframes.

Establishing the FCRA as the national standard would avoid these problems and allow us to achieve in the fastest possible manner our common goal—accurate consumer reports.

However, we recognize and agree that the provision establishing national uniformity for credit reporting should preserve the appropriate enforcement role for the State Attorneys General and other State officials.

As to issues raised by S. 783, we believe that imposing liabilities on persons that simply furnish information to the credit bureaus could in fact dramatically increase litigation against creditors who are not compensated for providing this information. This would reduce the availability of essential credit information as creditors attempt to avoid liability by restricting the information they furnish to credit bureaus.

In fact, faced with the liability imposed by the bill, a creditor would be presented with a choice—either reduce or stop reporting information to credit bureaus, or increase the prices charged to consumers to offset the risk. Either alternative would be quite detrimental to consumers.

Although we appreciate the confirmation of prescreening in S. 783, the existing language would cause operational difficulties. In particular, it would create uncertainty regarding when a prescreening offer may be withdrawn. It would also unnecessarily restrict the information that can be included in a prescreened list. Given the significant benefits prescreening provides to consumers and creditors, such operational issues should be avoided.

The bill would also create operational problems with reinvestigation of disputed information. The bill establishes a rigid 30-day timeframe for the completion of reinvestigations. Although 30 days is sufficient in most cases, the bill eliminates the flexibility under current law to use additional time where appropriate.

This creates significant potential for abuse. For example, the bill requires the credit bureau and creditor to consider relevant information submitted by the consumer at any time during the reinvestigation process without any extension of the 30-day time limit. It is impossible to comply with such a rigid timeframe if a consumer submits additional information in the final days of the 30-day period.

The bill also provides that creditors have less than 20 days to complete their part of the reinvestigation. Such a timeframe is simply too short, particularly when compared to other Federal consumer protection laws. For example, the Truth-in-Lending Act permits two full monthly billing cycles, or 90 days, to resolve billing errors on credit card accounts.

The bill would also dramatically expand the scope of the FCRA adverse action notice requirements inconsistent with the existing Federal Equal Credit Opportunity Act. Creditors would be required to furnish adverse action notices in inappropriate situations. The bill would also impose new disclosure requirements which would only detract from information already provided to consumers under the FCRA and the ECOA.

In summary, notwithstanding the helpful focus on this subject, many provisions of the bill would create costly operational problems. These problems could be largely avoided by waiting until the recent consent agreements have been fully implemented and carefully considered before proceeding with Federal legislation.

That concludes my testimony, and once again, we'd like to thank the committee for the opportunity to testify on these important issues.

Senator BRYAN. Mr. Hunter, we thank you very much for your testimony.

Mr. Mierzwinski, we'll hear from you next, sir.

STATEMENT OF EDMUND MIERZWINSKI, CONSUMER PROGRAM DIRECTOR, U.S. PUBLIC INTEREST RESEARCH GROUP, WASHINGTON, DC

Mr. MIERZWINSKI. Thank you, Senator Bryan. It's a privilege to testify before you on this important matter.

As a point of personal privilege, I want to say that U.S. PIRG appreciates your leadership, not only on credit bureau reform, but also on product safety, CAFE, and all the other issues on which you are a consumer champion in the U.S. Senate.

We're pleased to testify on behalf of a number of consumer organizations listed on my testimony—Bankcard Holders, Consumers Union. We're doing joint and several testimony today—Consumer Federation of America, and the U.S. Privacy Council and Public Citizens Congresswatch, on this important bill.

I hope that before the end of 1993, we can, working together, pass a bill reforming the FCRA. It is an archaic, weak, ineffective, narrow, unenforced, and largely, unenforceable, piece of legislation. It is not yesterday's model. It is not last year's model. It is, in fact, a piece of prehistoric junk.

[Laughter.]

The industry and computerization have passed it by. With due respect to Mr. Connelly's testimony that it has worked well, I would strongly disagree.

We believe that the bill offers a good beginning and our testimony focuses on proposed changes that we would like to make to the bill.

I would like to point out that we have been very concerned in the past over the industry's failure—the industry, meaning the broad industry, the credit bureaus' and the credit providers,—failure to come up with a position on the bill. And if I heard Mr. Connelly correctly, I believe the credit bureaus have withdrawn their support for legislation.

Last year, we supported legislation, but we opposed pre-emption. This year, we oppose legislation. We prefer the consent decrees. And of course, the banks and the other providers who are responsible in large part for mistakes, but don't get blamed for them, have also juggled around what they're for and what they're against. It's like a game of illegal three-card monte—which cup is the industry's position under?

I hope that, working together, the consumer groups, the State government and the Federal Trade Commission, can work with the Senate and the House to pass a bill, and I hope that you can use your leadership to pull the industry along because it is very difficult for us to look at the problems that consumers face out here and listen to industry groups say, we can do it with voluntary agreements. We can do it with consent decrees, based on a weak law, and we don't need legislation.

Quite frankly, I thought that was all behind us and I thought that this was the year that we would work on a bill. So I hope that we can bypass that.

I'm aware of the industry's stance that it is not the same industry as it was 2 or even 5 years ago. But I would point out that the reason for that is, as Justice Brandeis said, that sunlight is the best disinfectant.

The continued pressure by Congress and the States and consumer groups and the media has been what has made a difference in this industry.

I want to second your comment, Senator Bryan, that these consent decrees will not do anything about the fact that creditors are responsible for a great deal of the problem. Creditors are not liable under the act. Creditors have no responsibilities under the act.

Let me go briefly through just a couple of the area of concern about the bill. Obviously, we like a great deal of the bill. We especially like that it does not include the pre-emption of State law.

On the area of privacy, I would associate my remarks with those of Attorney General Curran. We would strongly oppose extending target marketing to credit bureaus. The bill would apparently codify Trans Union's position that target marketing should be allowed under the act, although Trans Union is in administrative litigation with the agency on that point.

We believe that consumer privacy should not be invaded by allowing credit information to be used for junk marketing.

I don't think my credit cards should have a role in what magazines I get proposed solicitations for.

I will point out, though, that on this, Mr. Chairman, the consumer groups are frequently accused of not being reasonable.

I want to point out that we support, or at least do not oppose, the proposed changes to the prescreening that is allowed for credit purposes in the act. Your bill would weaken the FTC's current position on prescreening and allow a reasonable amount of post-screening by the industry.

In the interest of balance, because we recognize that prescreening is an important part of the credit allocation process, we will allow that and we will not oppose it. But when you extend it to target marketing, we have a problem with it.

Second, we believe that furnishers should be subject to reasonable procedures, as the House bill provides.

And third, as Attorney General Curran mentioned, Vermont provides for informed consent. I think it's very important that your bill provides additional duties on resellers, these information underground and superbureaus. There are a lot of resellers, but some of them are in an information underground. Some of them are questionable individuals with some unseemly reputations.

I believe that it is important to place greater burdens on them, but we think that an important part of the solution of protecting consumers from invasive use of their credit reports is to give consumers the right to control the use of their report by preauthorizing its use.

Most creditors would not have a problem with this because, in any application, they ask the consumer if they can use his or her credit report in the application process.

We are going after the other users of credit reports and that is our target. Again, I want to work closely with your staff on this solution to this important problem and I hope that we can finish it in 1993.

Senator BRYAN. Thank you very much. We appreciate your testimony.

Mr. Prill, we'll hear from you now.

STATEMENT OF RONALD PRILL, VICE PRESIDENT OF CREDIT, MERVYN'S, HAYWARD, CA

Mr. PRILL. Thank you, Mr. Chairman.

My name is Ronald Prill. I am vice president of credit for Mervyn's. I am pleased to appear today on behalf of the National Retail Federation, for which I am also chairman of the federation's credit advisory council, to discuss proposed legislation that is of great importance to retailing.

Mr. Chairman, the retailing industry opposes the sweeping reform of the Fair Credit Reporting Act that is envisioned by S. 783. The existing law is sound in its basic approach and in the manner in which it operates. The FCRA should not be amended.

The consumer reporting system has evolved over the last 20 years in a manner so that today it works efficiency and it works accurately. Sound credit decisions can be made on the spot because credit reports are available virtually instantaneously.

Nothing should be done that would adversely affect the manner in which the current system operates. If this law is enacted, you

will provide an incentive for credit-grantors not to participate fully in the system as they do today.

The character of credit reports will change and change for the worse. This would hurt consumers, as well as burden credit-grantors.

The Fair Credit Reporting Act properly regulates the businesses that collect credit history information voluntarily furnished to them and which they sell to businesses that have a need for it.

The current balance between the consumer's rights and the creditor's needs must be maintained if we are to continue to conduct business in today's competitive environment.

While we have a number of concerns about the bill under consideration, the most critical is the proposal to create substantial compliance obligations and impose major civil and administrative liability upon the hundreds of thousands of creditors that voluntarily report their customers' account payment history to consumer reporting agencies.

That would be a drastic departure from the longstanding policy that compliance obligations and civil and administrative liabilities should be concentrated upon those companies that are in the business of assembling and disseminating third-party information.

The result of imposing private civil liability upon businesses that furnish information to credit bureaus, that is, consumers would be authorized to sue furnishers as to certain requirements, would be that virtually every delinquent customer would be assured of having a new cause of action in the event the creditor seeks to recover the balance due on a delinquent account. This cannot be justified by the current state of affairs.

Also, the threat of administrative challenge in the event of furnishing inaccurate information could force creditors to reduce significantly the frequency and volume of information that they voluntarily report today, if not eliminate it entirely.

Turning to the proposal to give authority to State Attorneys General to bring suits in Federal court to obtain relief against anyone who violates the FCRA, we find this objectionable. Even a technical violation could trigger such enforcement.

This would in effect grant each Attorney General the power to establish his or her own set of standards through the exercise of prosecutorial discretion in the bringing of cases. Rather than producing nationwide consistency in regulating consumer reporting conduct, this provision could create chaos in the interpretation and enforcement of the FCRA.

The notion that every State Attorney General should have a license to act as a Federal policy-maker could create a legal nightmare for legitimate businesses, especially those operating in a multi-State environment.

The bill before you contains a number of provisions which would impede legitimate business practices without delivering counterbalancing consumer benefits.

The requirement that the consumer be given a reasonable opportunity to respond before taking adverse action when the consumer report is used for employment purposes would cause severe operational problems when hiring is done on a temporary or seasonal basis, as is a frequent practice in the retailing industry.

There is simply not sufficient time to defer certain hiring decisions until the applicant goes through the process of seeking a reinvestigation of his or her credit bureau report.

Regarding the bill's authorization to prescreen for marketing purposes, the limitation that only the consumer's name and address may be furnished for direct marketing purposes would effectively preclude telemarketing efforts.

Moreover, the absence of certain demographic information would hamper segmentation that is essential in direct marketing efforts.

Whether prepscreening is done to solicit for credit or to solicit the purchase of goods and services, the only restrictions that are warranted are that a firm offer be made and that the information furnished pertaining to a consumer not identify any particular creditor or other business.

The bill would give consumers an unqualified right to have their credit report include any "relevant" information. That would change the basic nature and character of consumer reports. It could seriously disrupt the process of assembling information and, more important, once collected, the credit bureau report would have to include it in all reports that are furnished.

This would make credit bureau reports unwieldy, much more expensive, and incompatible with the computerized, on-line communication systems that most creditors use today.

Finally, any legislation on this subject would be deficient without pre-emption of State law to ensure that any new Federal FCRA reforms can be implemented in a cost-effective manner.

The proposed new Federal law now being considered is not a bare-minimum floor and pre-emption is not an anti-consumer measure.

There are no special local or regional concerns in the field of consumer reporting that outweigh the need for uniformity.

In order to justify Federal pre-emption, the following conditions should be present.

No. 1, a problem area that is truly national in scope.

No. 2, a Federal legislative solution that is comprehensive and effective for consumers, regardless of what State or region they inhabit.

And No. 3, the benefits derived from complying with one set of uniform rules outweigh the traditional grant of authority to the States to add their own variations.

All of these factors are present here.

Individual State variations and disclosures, opt-out rules, compliance procedures, et cetera, are not cost-effective and they do not benefit consumers.

Rather than add diversity, they lead to confusion, disruption, and chaos for industry. When a field is truly national in scope and the Federal legislative solutions are comprehensive, pre-emption of State law is the correct, albeit, politically difficult, choice to make.

Once again, Mr. Chairman, thank you for the opportunity to appear here this morning.

Senator BRYAN. Senator Bennett has joined us. Before opening the round of questioning, I'll yield to him for any opening statement that he might care to make.

Senator BENNETT. Thank you, Mr. Chairman. I'm here to learn this morning.

Senator BRYAN. We're delighted to have you here.

Let me begin, if I may, Mr. Prill, if I could ask you a couple of questions here to make sure that I understand the National Retail Federation's position.

In the early part of your testimony, I sensed, and I want to make sure that I understood this, that, in effect, you believe that whatever problems have existed in the past in the system have now been corrected, and you don't believe that a legislative remedy is necessary. Is that essentially what you're saying?

Mr. PRILL. Mr. Chairman, I think that's an accurate assessment. I would point out that the overwhelming majority of credit history information that is reported by furnishers to credit bureaus is accurate at a very high level, No. 1. No. 2, it is positive information that is helpful to the consumer.

Senator BRYAN. Mr. Prill, the thrust of what Senator Bond and I are doing, we're not accusing anybody of bad faith. We recognize that there is a volume of entries that are made that is staggering. There are some problems, at least in our perception of the situation. But I want to be clear. So your view is that, essentially, from the retail point of view, you don't believe that any legislative remedy is necessary, at least at this time.

Mr. PRILL. We don't see a level of inaccuracy or issues not adequately addressed by existing law, such that a sweeping reform of existing law is in fact appropriate.

Senator BRYAN. Do you favor any legislative correction?

Mr. PRILL. No. We do favor enforcement of the existing provisions.

Senator BRYAN. All right. Let me, if I may, Mr. Connelly, get back to a point that you made. And that is that in your prepared testimony, you indicate that this credit reporting system is subject to three component parts. And you correct me if I misstate the proposition that you've advanced. There's the consumer, who clearly plays a role. There is the credit grantor—I believe those are your words. And the reporting agencies themselves. And you spent a considerable amount of time indicating some of the reforms that have been undertaken by the reporting agencies themselves, the provisions of the consent decree, and all of that.

If, indeed, the credit grantor is essentially a part of the system, why should the credit grantor be, in effect, excluded from the provisions of the reforms that we're trying to undertake? What's the argument for that?

Mr. CONNELLY. Sure. Senator, I appreciate the attempt to clarify that because I don't think that they are excluded. And I'm telling you that they are not excluded from the system.

They are very much involved—and I might have been negligent in not pointing that out in my testimony—but they are very much involved in all of the task forces and the work that we're doing to create the tape formats, to assure the proper matching logic—I'm over my head in talking about computers—but matching logic for making sure that the information does not create mixed files.

We have a number of inter-industry task forces that work together. And working together is exactly what we must do.

I mentioned in my testimony that one of the things that's going to address the problem you raised with one of the earlier witnesses, the repetition of an error, is a solution that's right now in test. It will go on line this summer. It's called the automated consumer dispute verification system.

The credit grantors are an integral part of that. They're investing a lot of money in that, and they're working hard to make that real. So I agree, sir, they are an integral part of it.

Senator BRYAN. But assuming that point, and I did not frame the question narrowly enough, would you not concede that the consent decrees that you talked about, and which you kind of went through the things that you've done.

And frankly, I must say that, in reading your testimony, I had the impression that if the legislation was confined only to the credit reporting bureaus, that essentially, you didn't find too much fault with the legislation that we've advanced here.

You've indicated that, with respect to section after section in your analysis, in your complete testimony, not your oral testimony here, you were essentially doing most, if not all, of those things.

Mr. CONNELLY. That's correct, sir.

Senator BRYAN. And I guess my question to you more specifically, number one, do you agree that the consent decree does not extend to the credit grantors?

Mr. CONNELLY. That is correct.

Senator BRYAN. So that if there are some problems out there, that we obviously have to get at that part of the system as well.

Mr. CONNELLY. Well, I think, Senator, that we are getting at that problem.

I think the whole discussion makes an assumption, if I may, sir, that there is no incentive on the part of the credit grantor to have accurate information about the consumer in the credit bureau file.

The credit grantor has a monthly billing with the consumer. They're regulated by the Fair Credit Billing Act. They have a constant communication with the consumer.

If I see something one month on my bill, he's a valuable customer. So I think the market place, sir, is a significant force in driving accuracy by the credit grantor.

No, sir, they're not covered by the consent decree.

Senator BRYAN. Mr. Hunter, you raised some concerns about liability. Let me ask you your view.

If the evidence should support in a given hypothetical case a course of conduct, a pattern, if you would, in which a grantor is being reckless to the point of disregarding a consumer's rights in providing information to the credit bureau, would you not concede that under those circumstances, hypothetical that I'm giving you here, that some appropriate action ought to be taken against the credit grantor?

Mr. HUNTER. Yes, Senator, we would. I mean, it's not in the industry's interest at all to allow or encourage anyone who's reckless in the way in which they treat consumer information to be allowed to continue to do so.

Senator BRYAN. And if that pattern were established, I'm assuming now the facts that are there to support that proposition, who, in your judgment, ought to enforce that? Assuming that you have

that kind of a creditor grantor, what remedy do you suggest ought to be provided to correct that abuse?

Mr. HUNTER. Well, at a minimum, such a credit grantor would undoubtedly be in violation of its contract with the credit reporting agencies under which it would have an obligation to use all due diligence in providing accurate information, in providing investigation follow-up and cooperating with all of their procedures.

So I would imagine that, at a minimum, they're going to have a problem in continuing their relationship with the credit reporting agency.

Senator BRYAN. Would you disagree that the FTC ought to have some authority in those circumstances to take appropriate action?

Mr. HUNTER. I think that when you have somebody that's using reckless abandon in treating information, there needs to be some sort of remedy, yes, sir.

Senator BRYAN. So you agree at least in principle that some kind of remedy needs to be provided with the FTC if the credit grantor is being, as a matter of pattern of conduct, is providing information to the agencies that ultimately compile the credit reports.

Mr. HUNTER. I think part of the concern we have—

Senator BRYAN. I want to give you a chance to respond fully. But I mean, do you agree in principle that we need some remedy that ought to be available if we have that kind of conduct?

I'm not accusing you, Mr. Hunter, the banks of that conduct.

Mr. HUNTER. Sure.

Senator BRYAN. But if that kind of conduct is present out there, shouldn't there be a remedy?

Mr. HUNTER. My understanding is that there are enforcement statutes available today that can be enforced within the States. But, in addition, the issue is not so much one that we're concerned about with regard to flagrant violation or flagrant disregard for the accuracy of consumer information, but, rather, with the inflexibility that's been introduced into this bill.

Senator BRYAN. And tell me where you find that inflexibility? Senator Bond and I obviously don't think this was crafted in Holy Script. Where do you find that inflexibility?

Mr. HUNTER. Well, my understanding as I read the bill, Senator was that a single violation could prompt up to a \$1,000 fine on the part of a State regulator.

In addition to that, we have the question of civil liability in a case where there could be a dispute over what constitutes relevant information and what constitutes reasonable consideration of that relevant information.

Senator BRYAN. Let me ask another thing. The bill provides that for an individual that provides information as a credit grantor, assuming there's no pattern of conduct, even though that information is erroneous, it provides no civil liability for the credit grantor.

But in those circumstances in which the consumer has noticed that the information in his or her report is inaccurate, and thereafter, after notice, no correction has been made, then, under those circumstances in a given circumstance, you may have liability on the part of the credit grantor. My question is what's wrong with that? If you've been notified that there is erroneous information and failed to correct it, shouldn't there be some liability?

Mr. HUNTER. Again, Senator, I don't think my concern runs to the issue of whether or not flagrant abuse should not be dealt with and some sort of enforcement action taken.

My concern runs to, it's my understanding as the bill is written, is that it is inflexible on the question of the potential for a single violation to create a penalty, as well as the ambiguity around what constitutes relevant information and what constitutes reasonable consideration of that information.

Senator BRYAN. Without conceding that interpretation because I do not, but I want to follow up, again.

Mr. Hunter, do you agree with the basic proposition that if you have a credit grantor who has provided information, let's assume in the first instance, innocently, and not as part of a reckless pattern. But after having been notified by the consumer, that the information is inaccurate and who thereafter fails to take action, should there not be some remedy available against that credit grantor?

Mr. HUNTER. I guess I would have to say, yes, Senator, there should be.

Senator BRYAN. Ms. Meier, you had a desire to respond.

Ms. MEIER. Thank you, Senator, yes. This is a very important issue for us because we view holding an industry liable under the law in the face of violations as an important accountability measure.

In our written testimony, we made comments based on the interpretation of the bill that would not hold credit grantors liable under the civil liability provisions in the situation you just described.

I would have to say that we would be very happy to hear that that's the wrong interpretation, that if there is a mistake, a notification to the credit grantor that a mistake has been made, and then failure to act, that the civil liability provisions would kick in. If that is your intent there, I'm very pleased with that.

I would like to just make one comment, obviously, since you're hearing this issue from both sides, just to set the record here.

Senator BRYAN. Yes.

Ms. MEIER. Consumer groups do not believe that it would be at all reasonable to hold either credit-grantors or credit bureaus to a 100 percent accuracy standard. All we're after here is reasonable procedures. And one of the procedures we think is reasonable is if there is a mistake and then there is notice that the mistake exists, that there is a correction.

So I wanted to lay that red herring to rest, that we don't think 100 percent accuracy is possible. We're just looking for reasonable procedures.

Senator BRYAN. Before yielding to the distinguished cosponsor, I'm going to ask a question that the Chairman asked me to ask both of you, Ms. Meier, and Mr. Mierzwinski.

Senator BOND. Yes, ask that.

Senator BRYAN. Yes. I think if we ever want to get this, I think we'd better respond.

So let the record reflect that Senator Bond and I are enthusiastic in advancing this question on behalf of the Chairman.

[Laughter.]

In fact, it was my negligence not to make it the very first question that I had to ask. But here it is.

Accuracy is a significant problem with credit reports. Studies have indicated that major errors may exist in as many as one-fifth of all reports.

The question actually has two, maybe even three, subparts. Let me try it.

No. 1, how far does the bill go toward ensuring that credit reports are accurate to begin with? And that when they do contain errors, that those errors are promptly and permanently corrected? That's one question.

The second question, are the liability provisions for those who furnish information to credit bureaus—that would be the credit-grantors, I'm assuming—strong enough to ensure that they won't provide inaccurate information?

And then the third question is will these liability provisions chill the availability of credit?

Let me begin, Mr. Mierzwinski, with you, if I may, and then, Ms. Meier, return to you.

If you need me to repeat those questions, I'll be happy to do that.

Mr. MIERZWINSKI. Senator, I think that I can get them.

The consumer groups believe that one of the strongest parts of your bill is the reinvestigation section. There are some differences that I would have to check with the House bill, but I think that, in general, both of those sections are quite similar.

The reinsertion of previously verified information is one of the most important parts of that section. I believe the House bill is a little bit stronger there, but your bill is substantially stronger than current law for furnishers of information.

As to the liability of furnishers, we believe that that civil liability or a private right of action should extend to any violations under the act. And that would include violations of reasonable procedures, which S. 783, to my knowledge, does not require the furnishers to have in order to prevent errors.

I think that for the FTC or the banking regulators to adequately enforce this from their perspective, let alone consumers from the private right of action perspective, we need to insert the reasonable procedures section.

As to whether or not changes in this Fair Credit Reporting Act will have a chilling effect, again, I think that that's a suggestion that is designed solely to delay action and to prevent the passage of an important law.

I would find that there's no chilling effect to giving consumers rights that they should have had 24 years ago when the first bill passed.

If I could make one comment on the concept of the voluntary standards that the industry believes that we don't need a law, the creditors.

One thing that is very modest that I've been very disappointed with, just to show you how little I think the creditors have done, section 615 of the bill is very weak.

That requires an adverse action notice to be given to a consumer after he has been denied on the basis of a credit report.

As you know, that section is very poorly written. It does not require the creditor to tell the consumer that he has any rights under the law.

It doesn't require the creditor to tell the consumer that he has the right to a free credit report. It only requires the consumer to learn that a credit report may have been used.

Senator BRYAN. Let me just be clear. You're talking about the current law, not the proposal in Senator Bond's bill, and mine.

Mr. MIERZWINSKI. I'm talking about current law, yes.

And so what I'm saying is, on the current law, I can't believe that the creditors won't simply tell consumers what their rights are under current law, even though the current law doesn't specifically require them to do that. They're not going to do it unless you put it into law.

This is a very little thing that they could be doing now. They could be educating consumers about credit reporting. There may be a few creditors who tell consumers they have a right to a free report and the right to a reinvestigation and the right to a 100-word dispute written in their own words, et cetera. But I can assure you, those creditors are few and far between.

So I'm simply getting to the point that we need a law in order to do this. We can't rely on the contract between the creditors and the credit bureaus.

Senator BRYAN. Ms. Meier, let me give you a chance to respond to our Chairman's questions for the record here.

Ms. MEIER. OK. Thank you. On the accuracy question, the first question, which went, I believe, to does the bill do enough to ensure accuracy from the get-go.

Senator BRYAN. Yes.

Ms. MEIER. Rather than in the context of correcting an inaccuracy during the reinvestigation process.

I think that the bill has a number of provisions that will move us in that direction. But, as you know, the free report provision, we view as a key element of solving that problem because getting the report, first off, is the first step toward flagging mistakes.

On the second question, my earlier comment I think addressed that, and only to emphasize, there is a drafting ambiguity in the bill right now. Under one interpretation, credit grantors are virtually off the hook in the context of a lawsuit by the victimized consumer. Under another interpretation, which you're saying is the intended one, that immunity only applies in one circumstance.

I would have to say that if that latter intent is the one that proceeds, we would be very pleased, and I think the bill would be strong on the question of holding credit-grantors accountable for minimum standards.

And then on the last question, generally, we have been saying for a couple years now that we think that the Fair Credit Reporting Act civil liability provisions are the weakest ones going in the context of consumer banking laws. Even the Truth-in-Lending Act provisions are stronger. So we would like to see those strengthened. But I'm not going to scream about it.

I guess I'll leave it at that.

Senator BRYAN. Ms. Meier, we thank you very much. Let me yield now to Senator Bond.

Senator BOND. Thank you very much, Senator. Again, my apologies for having to leave because of another very compelling hearing. I had to make an appearance there, but I have glanced through and will study your testimony.

Mr. Hunter, in your remarks, you devoted a good deal of attention to prescreening. But I was reflecting on the comments made by Attorney General Curran of Maryland about the whole concept of prescreening.

Yes, granted, the FTC has said it's a good idea. But why should I have to take affirmative action to keep someone from going into my financial information, digging out the details and making an evaluation as to why I'm a good credit risk?

Why shouldn't, as Attorney General Curran implied, there be some kind of opt-in to the system before we start getting the benefits of all of these wonderful credit card opportunities you have so graciously made available and on which I rely.

[Laughter.]

But, as a holder of one of your cards, I have enjoyed the use of it. But why should you decide for me that I need to have my credit examined by you so you can extend me a card?

Mr. HUNTER. Well, Senator, our view is that prescreening offers very significant advantages to the consumer. It frankly helps a lot of consumers who would not qualify from receiving unwanted solicitations to which they might respond and for which they might be rejected, which, in turn, could end up being reported to a credit reporting agency that such a solicitation or invitation, request for credit had been made and declined.

So we believe that prescreening has enormous benefits to the consumer in making sure that we get to the people who in fact do qualify in the first instance.

The issue of opt in, as a practical matter, if we were to institute an opt-in procedure, you would be spelling the death of any prescreening initiative. It just wouldn't work practically. People wouldn't do it, not because they don't want the solicitation, but because the sheer inertia of daily life generally prevents people from bothering with those kinds of issues.

Senator BOND. And by the same token, would then prevent them from opting out, probably.

Mr. HUNTER. Well, opting out—somebody who feels generally bothered by the fact that they are receiving such requests would probably be more likely to want to take action to stop—when you have something that's coming at you that you want to stop, the incentive to do so is clearly there.

When you have nothing out there, the incentive to find something is generally less compelling.

Senator BOND. I would agree with that.

In your written testimony, you said that our provisions dealing with prescreening would cause operational difficulties for creditors engaging in prescreening by creating uncertainty under which a prescreened offer may be withdrawn. Do you have suggestions on how we could improve the language, how we could make it more clear and workable?

Mr. HUNTER. Senator, what I'd like to do is take that under advisement and get back to you with some suggestions.

Senator BOND. We would welcome that. We look forward to having creative ideas on how we can achieve the goals we seek. And if we can do so in a less burdensome and more effective manner, certainly, I would welcome it.

Mr. Connelly, you said you oppose a free credit report every other year. Would you oppose, say, a refund of the charge if a consumer found an inaccuracy in his or her report?

Mr. CONNELLY. No, Senator. I think that what we must understand is that the consumer is being charged not for the information in the report, but for the expense related to the disclosure.

Certainly, as the law currently says, there can be no charge for reinvestigation, no charge for the deletion of the information, no charge for seeing the other steps that have to be taken. But I think that's a business decision that would be made one-on-one in the instant cases.

Frankly, in the 24 years, I've not heard of that being a problem and that has kind of caused me to pause before answering your question. I really never heard it to be a problem. I think that, were someone to challenge it, I think that they probably would—I would like to think that they would give them their money back.

Senator BOND. Mr. Prill, you have mentioned in your testimony that a likely consequence of extending civil liability to the furnishers of information would cause them simply to cease furnishing the information.

As we attempted to draft the legislation, a furnisher of information would only be liable under FCRA if it wilfully or negligently violated the act. Do you think that your industry would be unable to abide by the proposed legislation if you're not liable for innocent mistakes, without wilfully or negligently violating it?

Mr. PRILL. Senator Bond, our concern about the civil liability is reflected in the discussion I've been listening to this morning. There is confusion about what does the bill specifically provide or what does it not, combined with differing interpretations as to what the intent is or what the language currently would provide, coupled with the concern that we have about enforcement by the Federal Trade Commission. We are also concerned about the State Attorneys General exercising their own discretion, perhaps their own definitions of patterns of abuse, for example, and the absence of Federal pre-emption, on top of that. We might have to deal with many different State laws with differing requirements.

All of those things, as a credit-grantor who voluntarily furnishes consumer information, mostly positive, cause us grave concern about just exactly when and in what situations would we be liable for what. And the actual liability, winning or losing a lawsuit, if one were to be brought, is of great concern to us.

Of equally great concern is simply the number of suits that we suspect would be filed. Perhaps if we were to attempt to collect a delinquent balance on an account, facing a suit or threat of suit. This bill establishes a new cause of action that consumers would have to allege that there's a violation. That causes us great concern, because—and we think that we would likely not be alone—we do not have a large legal staff to advise us. Most retail credit-grantors do not.

Because of this threat, we'd be very concerned about our ability to continue to voluntarily furnish information that we report, or at least with such frequency or in such detail as at present.

Senator BOND. So you're saying that if you filed a suit to collect a delinquent account, and you're concerned that if, in doing that, you furnished information to the credit bureaus, that that would be grounds for a suit?

Mr. PRILL. No.

Senator BOND. I mean, for a counter-claim.

Mr. PRILL. We are concerned this would provide our customer who is delinquent an opportunity to allege a law violation or threaten to bring suit in that situation.

Senator in our business at Mervyn's, we have an average account balance of around \$200. If we were threatened with a law suit, whether it was defense fees or someone's attorney's fees, where we would risk substantial expense, what we would likely do is cease and desist our attempt to collect that account, even though we believe the debt is owed.

The point I'm trying to make is we are concerned that there would be litigation or threat of litigation under this new law, unrelated to the delinquency of the account. There would be a counter-claim in the hopes that we would simply not take the risk or incur expense of pursuing an action.

Senator BOND. Ms. Meier, you wanted to comment on that?

Ms. MEIER. Yes, thank you. Just to provide the opposing viewpoint on this.

It is the requirement that consumers, under the Fair Credit Reporting Act, have to prove negligence or wilful noncompliance. That is one of our concerns about the civil liability provisions.

In the Truth-in-Lending Act, the consumer proves a violation and then the burden is on the bank or a creditor to prove that it had reasonable procedures.

So it is already a hurdle for consumers not only to show a violation, but to show that the procedures were such on the credit-grantor's part or the bureau's part that there was negligence involved. That's a hurdle for consumers. An area that we would like to see improvement, although if that's one of the problems that doesn't get fixed, we can live with it.

And Senator Bond, one other thing, because this liability issue, not just in this context, but in all consumer legislation, is an issue that industry reps raise.

I would like to point out, in response to the claims about frivolous claims being made, that's what we always hear. Let's immunize industry persons from any civil liability because all these consumers will come in and we'll have frivolous litigation and those attorneys will make so much money, and all that sort of thing.

I really think that that's a red herring because the rules of civil procedure will severely penalize an attorney who brings a frivolous claim. There is a lot of concern about frivolous litigation, but it is addressed in the general rules of civil procedure.

So that particular problem is not one that should lead us to immunize industry altogether.

Senator BOND. I would say, on the one hand, I agree that there probably is a problem with frivolous litigation that we need to deal

with, but our effort here is to develop some clear-cut standards which would at least minimize those charges.

And I would extend to all of you the invitation that I guess I extended to Mr. Hunter. If you do have suggestions, particularly as a result of our discussions today on areas where you think we need to improve or change, I hope that you will let us know.

Ms. MEIER. Actually, Senator Bond, we had discussed with your staff person last year on that issue, putting in a provision that would penalize plaintiffs who bring frivolous lawsuits. And we have no problem with that because it's already a matter of civil procedure. So if you want to consider something like that, we could certainly live with it.

Senator BOND. Thank you, Mr. Chairman.

Senator BRYAN. Thank you very much, Senator Bond.

We're going to have to go to the floor for a vote, so this may be an appropriate time to conclude the hearing.

I appreciate very much the testimony of all the witnesses.

We'll keep the committee hearing record open for a period of time. Both Senator Bond and I and other Members of the committee may have some additional questions, and I know that, Mr. Hunter, you wanted an opportunity to respond to a particular question that the Senator asked of you.

So we thank you very much.

The CHAIRMAN. We will proceed now to the vote on S.422, the Government Securities Act Amendments of 1993.

The Clerk will call the roll.

The CLERK. Mr. Chairman.

The CHAIRMAN. Aye.

The CLERK. Mr. Sarbanes.

Senator SARBANES. Aye.

The CLERK. Mr. Dodd.

Senator DODD. Aye.

The CLERK. Mr. Sasser.

Senator SASSER. (Aye, by proxy).

The CLERK. Mr. Shelby.

Senator SHELBY. (Aye, by proxy).

The CLERK. Mr. Kerry.

Senator KERRY. (Aye, by proxy).

The CLERK. Mr. Bryan.

Senator BRYAN. Aye.

The CLERK. Mrs. Boxer.

Senator BOXER. Aye.

The CLERK. Mr. Campbell.

Senator CAMPBELL. Aye.

The CLERK. Ms. Moseley-Braun.

Senator MOSELEY-BRAUN. Aye.

The CLERK. Mrs. Murray.

Senator MURRAY. (Aye, by proxy).

The CLERK. Mr. D'Amato.

Senator D'AMATO. Aye.

The CLERK. Mr. Gramm.

Senator GRAMM. (Aye, by proxy).

The CLERK. Mr. Bond.

Senator BOND. Aye.

The CLERK. Mr. Mack.

Senator MACK. (Aye, by proxy).

The CLERK. Mr. Faircloth.

Senator FAIRCLOTH. Aye.

The CLERK. Mr. Bennett.

Senator BENNETT. Aye.

The CLERK. Mr. Roth.

Senator ROTH. (Aye, by proxy).

The CLERK. Mr. Domenici.

Senator DOMENICI. Aye.

The CLERK. Nineteen ayes, Mr. Chairman.

The CHAIRMAN. The vote is unanimous in favor. Next, we will vote on S. 216, the World University Games Commemorative Coin Act of 1993.

The Clerk will call the roll.

The CLERK. Mr. Chairman.

The CHAIRMAN. Aye.

The CLERK. Mr. Sarbanes.

Senator SARBANES. Aye.

The CLERK. Mr. Dodd.

Senator DODD. Aye.

The CLERK. Mr. Sasser.

Senator SASSER. (Aye, by proxy).

The CLERK. Shelby.

Senator SHELBY. (Aye, by proxy).

The CLERK. Mr. Kerry.

Senator KERRY. (Aye, by proxy).

The CLERK. Mr. Bryan.

Senator BRYAN. Aye.

The CLERK. Mrs. Boxer.

Senator BOXER. Aye.

The CLERK. Mr. Campbell.

Senator CAMPBELL. Aye.

The CLERK. Ms. Moseley-Braun.

Senator MOSELEY-BRAUN. Aye.

The CLERK. Mrs. Murray.

Senator MURRAY. (Aye, by proxy).

The CLERK. Mr. D'Amato.

Senator D'AMATO. Aye.

The CLERK. Mr. Gramm.

Senator GRAMM. (Aye, by proxy).

The CLERK. Mr. Bond.

Senator BOND. Aye.

The CLERK. Mr. Mack.

Senator MACK. (Aye, by proxy).

The CLERK. Mr. Faircloth.

Senator FAIRCLOTH. Aye.

The CLERK. Mr. Bennett.

Senator BENNETT. Aye.

The CLERK. Mr. Roth.

Senator ROTH. (Aye, by proxy).

The CLERK. Mr. Domenici.

Senator DOMENICI. Aye.

The CLERK. Nineteen ayes, Mr. Chairman.

The CHAIRMAN. The vote is unanimous in favor. Next, we will vote on S. 50, the Jefferson Commemorative Coin Act of 1993.

The Clerk will call the roll.

The CLERK. Mr. Chairman.

The CHAIRMAN. Aye.

The CLERK. Mr. Sarbanes.

Senator SARBANES. Aye.

The CLERK. Mr. Dodd.

Senator DODD. Aye.

The CLERK. Mr. Sasser.

Senator SASSER. (Aye, by proxy).

The CLERK. Mr. Shelby.

Senator SHELBY. (Aye, by proxy).

The CLERK. Mr. Kerry.

Senator KERRY. (Aye, by proxy).

The CLERK. Mr. Bryan.

Senator BRYAN. Aye.

The CLERK. Mrs. Boxer.

Senator BOXER. Aye.

The CLERK. Mr. Campbell.

Senator CAMPBELL. Aye.

The CLERK. Ms. Moseley-Braun.

Senator MOSELEY-BRAUN. Aye.

The CLERK. Mrs. Murray.

Senator MURRAY. (Aye, by proxy).

The CLERK. Mr. D'Amato.

Senator D'AMATO. Aye.

The CLERK. Mr. Gramm.

Senator GRAMM. (Aye, by proxy).

The CLERK. Mr. Bond.

Senator BOND. Aye.

The CLERK. Mr. Mack.

Senator MACK. (Aye, by proxy).

The CLERK. Mr. Faircloth.

Senator FAIRCLOTH. Aye.

The CLERK. Mr. Bennett.

Senator BENNETT. No.

The CLERK. Mr. Roth.

Senator ROTH. (Aye, by proxy).

The CLERK. Mr. Domenici.

Senator DOMENICI. Aye.

The CLERK. Eighteen ayes, one no, Mr. Chairman.

The CHAIRMAN. Next, we will vote on S. 183, A Congressional Gold Medal to Richard "Red" Skelton.

The Clerk will call the role.

The CLERK. Mr. Chairman.

The CHAIRMAN. Aye.

The CLERK. Mr. Sarbanes.

Senator SARBANES. Aye.

The CLERK. Mr. Dodd.

Senator DODD. Aye.

The CLERK. Mr. Sasser.

Senator SASSER. (Aye, by proxy).

The CLERK. Mr. Shelby.

Senator SHELBY. (Aye, by proxy).
 The CLERK. Mr. Kerry.
 Senator KERRY. (Aye, by proxy).
 The CLERK. Mr. Bryan.
 Senator BRYAN. Aye.
 The CLERK. Mrs. Boxer.
 Senator BOXER. Aye.
 The CLERK. Mr. Campbell.
 Senator CAMPBELL. Aye.
 The CLERK. Ms. Moseley-Braun.
 Senator MOSELEY-BRAUN. Aye.
 The CLERK. Mrs. Murray.
 Senator MURRAY. (Aye, by proxy).
 The CLERK. Mr. D'Amato.
 Senator D'AMATO. Aye.
 The CLERK. Mr. Gramm.
 Senator GRAMM. (Aye, by proxy).
 The CLERK. Mr. Bond.
 Senator BOND. Aye.
 The CLERK. Mr. Mack.
 Senator MACK. (Aye, by proxy).
 The CLERK. Mr. Faircloth.
 Senator FAIRCLOTH. Aye.
 The CLERK. Mr. Bennett.
 Senator BENNETT. No.
 The CLERK. Mr. Roth.
 Senator ROTH. (Aye, by proxy).
 The CLERK. Mr. Domenici.
 Senator DOMENICI. Aye.
 The CLERK. Eighteen ayes, one no, Mr. Chairman.
 The CHAIRMAN. The vote is unanimous in favor.
 Let me thank all of you. The hearing is adjourned.
 [Whereupon, at 12 noon, the hearing was adjourned.]
 [Prepared statements, response to written questions, and additional material supplied for the record follow:]

STATEMENT OF SENATOR ALFONSE M. D'AMATO

Mr. Chairman, I would like to commend you on calling this hearing to consider S. 783, the "Consumer Reporting Reform Act of 1993," a bill that would amend the Fair Credit Reporting Act ("FCRA"). I would also like to note the hard work that my colleagues on this Committee, Senators Bond and Bryan, have put into this bill. This hearing provides this Committee with the opportunity to revisit FCRA, and consider the need to update this law and expand its coverage.

As we all know, FCRA regulates the consumer credit reporting system, and the credit bureaus that collect and disseminate the information that drive this process. Credit bureaus play an important role in making credit available to ordinary American consumers. By acting as impartial sources of credit information, credit bureaus allow lenders, insurers and retailers to make informed decisions both quickly and inexpensively. The information that credit bureaus provide allows consumers to obtain financial services based on an objective determinations of their creditworthiness. Many consumers might not otherwise qualify for credit and other financial services at affordable prices.

At a time when we are experiencing a "credit crunch," Congress must be careful not to do anything to hamper the availability of consumer credit. Credit, be it for commercial or consumer purposes, facilitates economic growth. To the extent that access to *accurate* consumer credit information is impeded, our economic recovery will be slowed.

At the same time, credit bureaus can only play a useful role in this process if they maintain the highest accuracy standards. They owe it to the consumers on whom they report to maintain the strictest and highest standards practicable. Otherwise qualified consumers should not be denied credit, insurance or other services due to the inaccurate reporting of their credit histories.

Unfortunately, inaccuracies have occurred with alarming frequency in the past. We are all familiar with the horror stories—entire towns suffering potential credit damage because someone reviewing property tax records could not distinguish between a tax *lien* and a tax *payment*. Incidents like this demonstrate the extent for potential injury and inconvenience to consumers. Credit bureaus must correct inaccuracies that come to their attention quickly and permanently. Investigations must be both thorough and prompt, and once corrected, mistakes should not reappear. Likewise, institutions that report information to credit bureaus must have systems and procedures in place for minimizing reported inaccuracies, and investigating information that is disputed by consumers.

Credit bureaus must operate in a manner that protects consumers' privacy interests. A careful balance must be struck between the need for information, and the consumer's interest in not having his or her credit history disclosed to parties who do not have a permissible purposes for using that information. This balance is no simple equation; some of the uses of credit file information that are most disputed on privacy grounds, such as for direct marketing, may also offer consumers greater choices at cheaper prices. Today's hearing will provide the Committee with an opportunity to evaluate the success of current law in achieving this balance and the need for the reforms contained in S. 783.

I would like to thank all the witnesses for appearing today to present their views on this bill, I look forward to their testimony. I would also like to take this opportunity to welcome Robert Hunter, who is an executive Vice President with Chase Manhattan Bank in my home State of New York. Hopefully, the testimony of these witnesses will assist this Committee in its consideration of this bill, and the need for revision of FCRA.

PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION

MAY 27, 1993

Mr. Chairman and Members of the Committee, my name is David Medine, and I am Associate Director for Credit Practices of the Federal Trade Commission's Bureau of Consumer Protection. We are pleased to have this opportunity to present the Commission's views on possible remedies for the problems that consumers experience in their dealings with the consumer reporting industry and to comment spe-

cifically on S. 783, the Consumer Reporting Reform Act of 1993, which amends the Fair Credit Reporting Act (FCRA).¹

The principle underlying the FCRA when it was first enacted in 1970 was to ensure that this country's consumer reporting system would function fairly, accurately, and efficiently, without unwarranted intrusion into consumers' privacy. That principle is even more important today because technology and computers can provide instant access to vast amounts of credit-related information on consumers.

The challenge today is two-fold: to ensure that our laws are adequate to protect consumers' privacy in the face of an ever-escalating technological revolution, and to ensure that the increasing amount of financial information compiled on consumers is accurately reported. The current capabilities of the consumer reporting industry's information gathering and retrieval systems vastly exceed those available twenty years ago.

Credit bureau file information can reveal much of a personal nature about consumers and thus it is important that the Act's privacy protections not be eroded. Such information may include the payment history of many, if not all, of the consumer's credit accounts, how close the consumer is to his or her credit limit, how much credit is still available on lines of credit, and how much the consumer buys on credit each month. It identifies the creditors with whom the consumer does business and thus shows types and amounts of spending. It also shows any collection activity, liens, judgments, and other litigation in which the consumer has been involved, and similar matters of public record. The FCRA permits access to such information only for certain specified purposes, but debate over prescreening, target marketing, and third-party access to consumer reports for impermissible purposes indicates that some disagreement remains regarding the appropriate use of information in consumer credit reporting data bases.

The importance to consumers and creditors of accurately reported credit history information can hardly be underestimated. Creditors view credit history as a key indicator of credit risk, and so it is important to consumers who pay their debts in a timely fashion that their reports accurately reflect their good payment histories. It is equally important to creditors that the decision to accept or decline a credit application be made on the basis of accurate information. Only one or two items of adverse information can transform what would otherwise be an acceptable report into one that is unacceptable. Thus, a high level of accuracy in consumer reporting is important if the system is to function fairly and usefully.

There has been widespread public concern about the level of inaccurate information that appears in consumer reports. Inaccuracies in a consumer's report generally occur in one of two ways. One way is if the creditor reports the consumer's payment history information inaccurately to the credit bureau. Another way that inaccuracies occur is if the creditor reports the information accurately, but the credit bureau includes that information in a report on a consumer to whom it does not relate, producing a "mixed file" that does not accurately reflect that consumer's credit history.² At present, creditors who furnish information to credit bureaus are not required to meet any standard with regard to the accuracy of the information that they furnish, so that consumers have no recourse under the FCRA if the creditor is the source of inaccurate information and refuses to correct it. Requiring creditors and others who furnish information to credit bureaus to meet accuracy standards would certainly improve the overall accuracy of the consumer reporting system.

At the same time, this would not resolve all problems. Credit bureaus do not always use effective methods for ensuring that inaccuracies, once corrected, are permanently deleted from a consumer's report. Moreover, mixed file errors caused by credit bureaus also account for a substantial percentage of inaccuracies.³ In addi-

¹ While the views expressed in this statement represent the views of the Commission, my oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

² Consumers with common names or family members with similar names and a shared address are particularly likely to find mixed file information in their reports.

³ When enacting the FCRA, Congress set a standard for consumer reporting agencies with respect to accuracy. It mandated that consumer reporting agencies maintain reasonable procedures to assure the maximum possible accuracy of the information they report. Recognizing that inaccuracies would occasionally occur, however, Congress also provided consumers with important self-help remedies so that they could challenge errors and obtain corrections when necessary.

The FCRA gives consumers the right to learn when their reports have contributed to an adverse credit, employment or insurance decision, the right to review their reports, the right to dispute any incomplete or inaccurate information their reports might contain, and the right to sue consumer reporting agencies for violation of their rights. Because FCRA rights can be effectively used by consumers only if consumers understand them, Commission staff spends consider-

tion, consumers who dispute information in their reports often complain that credit bureaus fail to address their concerns expeditiously and effectively. The Commission believes that the consumer reporting industry can improve on its past performance, and that the role of consumers in this process cannot be ignored. Consumers who review information in their files for accuracy provide a necessary check on the system. It is therefore important that consumers be better informed about their rights under the Act, so that they can exercise them effectively.

The Federal Trade Commission is concerned about privacy and accuracy. The dissemination of inaccurate information serves no useful purpose and can be harmful. Credit bureaus are required to follow reasonable procedures to assure the maximum possible accuracy of the information they report on consumers.⁴ It is difficult to determine whether credit bureaus are meeting this standard unless they regularly assess the level of accuracy they actually achieve and revisit their procedures to determine whether greater accuracy is possible. The Commission would encourage them to do this on a regular basis.

Over the past several years, the Commission has been very active in enforcement of the existing FCRA. One significant action in 1991 involved TRW Inc., a company which maintains information on approximately 170 million consumers and is one of three major consumer reporting agencies operating nationwide. In this enforcement action, the Commission worked closely with a group of 19 State Attorneys General in entering into parallel Federal and State TRW consent orders, resolving the separate Federal and State actions voluntarily. The Commission's consent order focused primarily on issues of privacy and accuracy.⁵

Because, in the case of TRW, so many of the inaccuracies in consumers' reports allegedly stemmed from mixed file errors, the Commission's consent order requires TRW to seek more complete identifying information about consumers from creditors and to modify its computer software system so that consumer reports will be based on more detailed matching of information. These provisions should help ensure that information in a given consumer's file relates to that consumer and not someone else. By revising its computer programs and systematically monitoring the accuracy of its consumer reports, which the consent order also requires, the Commission anticipates that TRW will significantly improve the accuracy of the consumer reports it prepares.

The Commission's complaint also charged TRW with failing to reinvestigate disputed information within a reasonable period of time and failing to delete inaccurate or unverified information from consumer reports promptly. The consent order requires TRW to reinvestigate consumer disputes within thirty days, to convey to the creditor the nature of the consumer's dispute so that the creditor understands what is at issue, and to delete any information that is not confirmed within the thirty-day period. Under the consent order, information that is confirmed to be accurate after thirty days have elapsed may be reported, but only if the consumer is notified first.

The Commission believes that these and other provisions of the TRW consent order will do much to improve the accuracy of TRW's reports. However, the Commission's enforcement efforts are subject to the limits of a law that was enacted twenty years ago. Although that law provides a framework for enforcement action, as evidenced by the TRW consent order, there is no question that the law could be more effective than it is at present.

An updated law could strengthen enforcement capabilities and also, by clarifying the responsibilities of the consumer reporting industry, foster improvements in consumer reporting that could reduce the need for formal enforcement action. Despite the entry of the TRW agreement, and similar State agreements with Equifax and Trans Union, there is still a need to amend the FCRA. The Commission's enforcement powers should be enhanced and some legal responsibility placed on those third parties who report information to consumer reporting agencies to ensure the accuracy of the information reported. In addition, many smaller consumer reporting agencies in this country are not subject to any governmental orders and are, thus, regulated solely by the existing FCRA. Finally, changing technology and business practices have created a need to update this statute.

able time responding to questions from consumers about how best to deal with consumer reports and consumer reporting agencies. Despite our best efforts, however, it appears that the existing law may not adequately protect consumers in some respects. In addition, the Commission's recent cases under the FCRA suggest that consumer reporting agencies have failed to measure up to some of the standards that the FCRA requires.

⁴Section 607(b) of the FCRA states: Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

⁵*Federal Trade Commission v. TRW Inc.*, 784 F. Supp. 361 (N.D. Tex. 1991).

The Commission has also engaged in FCRA enforcement actions against large employers who have allegedly denied employment to job applicants based, in part, on consumer reports but who failed to disclose that fact to the applicant, as required by Section 615(a) of the FCRA, along with the name and address of the consumer reporting agency that supplied the report. The Commission has entered into final agreements resolving allegations of FCRA violations with Electronic Data Systems Corporation, Inc.,⁶ Keystone Carbon Company,⁷ the Kobacker Company,⁸ Macy's Northeast, Inc. of New York and several of Macy's retail subsidiaries,⁹ and McDonnell Douglas Corporation.¹⁰ The final orders require compliance with the disclosure provisions in the future and provide for notification to recent job applicants who did not receive the required disclosures. Two weeks ago, the Commission accepted for public comment a consent agreement with Marshall Field & Company to resolve similar allegations.¹¹

The Commission previously has supported legislative proposals to strengthen the FCRA so that it will better protect the accuracy and privacy of information reported by consumer reporting agencies.¹² The Commission continues to believe that legislation to amend the FCRA is warranted, and we commend you for your efforts in this regard. Let us turn now to S. 783.

The proposed bill includes many provisions that would strengthen the FCRA significantly and that the Commission would be pleased to see enacted. It would help make consumer reporting more accurate by making creditors responsible for the accuracy of the information they report to consumer reporting agencies and also by strengthening consumers' rights to dispute inaccurate information in their reports. S. 783 would help protect consumers' privacy by requiring consumer reporting agencies to make available to consumers records of those who have obtained consumer report information on them, including their purposes for doing so. It would also permit consumers to sue those who obtain report information unlawfully. It would give the Federal Trade Commission the power to enforce FCRA violations through the imposition of civil penalties. It would also bring credit repair organizations under the law, which the Commission has long advocated. Although the Commission has not calculated the costs associated with each of these changes, we believe that these provisions will provide significant benefits to consumers. Each of these proposed changes is addressed in more detail below.

The Commission continues to recommend that it be given civil penalty enforcement authority to enforce compliance with the Act. The Commission believes that effective enforcement of the privacy, accuracy, and other provisions of the FCRA would be significantly enhanced if the Commission were able to do more than order a violator to comply with the law through a cease and desist order of prospective effect only.¹³ In addition, as discussed in more detail later in this testimony, the Commission has supported provisions that would impose a standard of care on those who *furnish* information to consumer reporting agencies, which could be enforced by consumers in private civil actions as well as by the Commission in an administrative enforcement proceeding. The Commission has also suggested amending the law

⁶ Docket No. C-3342 (consent order, final Aug. 21, 1991).

⁷ Docket No. C-3360 (consent order, final Jan. 3, 1992).

⁸ Docket No. C-3359 (consent order, final Jan. 3, 1992).

⁹ Docket No. C-3362 (consent order, final Jan. 3, 1992).

¹⁰ Docket No. C-3361 (consent order, final Jan. 3, 1992).

¹¹ File No. 912 3100 (consent agreement, May 13, 1993).

¹² On September 13, 1989, the Commission testified on possible reform of the existing law at an oversight hearing held by the Subcommittee on Consumer Affairs and Coinage of the House Banking, Finance and Urban Affairs Committee. On June 12, 1990, the Commission testified before the same House Subcommittee on several bills to amend the FCRA—H.R. 4213, introduced by Representative Richard Lehman, H.R. 4122, introduced by Representative Charles Schumer, and H.R. 3740, introduced by Representative Matthew Rinaldo. On June 6, 1991, the Commission testified again on these bills, which had been reintroduced without significant change as H.R. 194, H.R. 421, and H.R. 670, respectively. On October 22, 1991, the Commission testified on FCRA reform before the Subcommittee on Consumer and Regulatory Affairs of the Senate Committee on Banking, Housing, and Urban Affairs, and again on October 24, 1991, before the House Subcommittee on Consumer Affairs and Coinage. On November 18, 1991, the Commission submitted comments on H.R. 3596, a bill introduced by Representative Torres. Most recently, on January 9 and 10, 1992, the Commission testified at field hearings of the Consumer Subcommittee of the Senate Committee on Commerce, Science and Transportation in Las Vegas and Reno, Nevada, respectively, concerning FCRA reform and, specifically, S. 1853, introduced by Senator Richard Bryan.

¹³ Providing the Commission the authority to enforce violations of the FCRA by imposing civil penalties would make those enforcement powers consistent with the Commission's existing power to enforce two other consumer credit protection statutes, the Equal Credit Opportunity Act, 15 U.S.C. § 1691, and the Fair Debt Collection Practices Act, 15 U.S.C. § 1601, both of which provide for civil penalty enforcement authority.

to provide that consumers and the Commission have authority to bring an enforcement action when a person impermissibly accesses a consumer's report. The Commission is committed to enforcing the FCRA and believes that expanded enforcement authority will enhance its effectiveness in doing so. Because the statute was designed to be largely self-enforcing, the capacity of consumers to bring private actions to enforce their rights under the statute is at least equally important.

I. PRIVACY

Prescreening

The prescreening issue, which has stimulated considerable debate among consumer groups, creditors, and the credit reporting industry, is an issue that involves significant privacy considerations. At present, a person may obtain a credit report on a consumer only if that person has a permissible purpose as defined in Section 604 of the FCRA. Where creditors are concerned, a credit bureau may provide a consumer report if it has reason to believe that the creditor intends to use the information in connection with a credit transaction involving an extension of credit to the consumer on whom the information is to be furnished.¹⁴

In 1973, the Federal Trade Commission expressed the view that a practice known as prescreening, in which a creditor asks a credit bureau to provide names of people who meet specified credit-granting criteria, was permissible under Section 604 if the creditor subsequently offered credit to all of the people whose names appeared on the prescreened list.¹⁵ The Commission recognized that a prescreened list constitutes a series of consumer reports and, as such, may not be released by a credit bureau absent a permissible purpose. The Commission determined, however, that even though the consumers whose names were on the list had not themselves sought an extension of credit from the creditor, the creditor created a credit-related connection with those consumers that could be deemed adequate to permit prescreening because the creditor had agreed in advance to extend credit to these consumers. The Commission also expressed the view that the benefit of the offer of credit justified what it perceived to be a modest invasion of the consumer's privacy. The Commission's Commentary on the FCRA, which represents the Commission's view of what the law requires, was published in the Federal Register in May 1990.¹⁶ Basically, it affirms the Commission's 1973 prescreening interpretation.¹⁷

In two recent actions, the Commission has sought to ensure that users of prescreened lists make the requisite firm offer of credit. In the Commission's 1991 TRW consent agreement, TRW agreed to include in all of its prescreening contracts a requirement that the purchaser make a firm offer of credit to each consumer on the list. TRW also committed itself to enforcing those contracts. In a recently instituted administrative action, the Commission has charged Trans Union with failure to comply with the FCRA's requirements as they relate to selling of prescreened lists.¹⁸ That matter is now in litigation.

Bills introduced in past sessions of Congress have taken different approaches to prescreening. One approach has been to prohibit prescreening altogether¹⁹ by permitting credit reports to be obtained only in a consumer-initiated transaction. S. 783 similarly makes it clear that the existing permissible purposes under the present statute are limited to consumer-initiated transactions, thus barring prescreening pursuant to those provisions. S. 783, however, also adds a new section that would permit a credit bureau to release information under Section 604 which addresses credit transactions, with the consumer's explicit or tacit consent. Under this pro-

¹⁴ Section 604(3)(A) of the statute also permits a creditor to obtain a credit report in order to review an existing account with the consumer or for purposes of collecting on such an account.

¹⁵ 38 Fed. Reg. 4945 (Feb. 23, 1973) (publication of six final interpretations under FCRA).

¹⁶ Statement of General Policy or Interpretation; Commentary on the Fair Credit Reporting Act, 16 C.F.R. Part 600 (1991) (hereinafter "FCRA Commentary"). The Commentary represents the Commission's interpretation of what the FCRA currently requires and may be relied on in judicial decisions. It is published in an effort to make the Commission's views and enforcement position more readily accessible to consumers.

¹⁷ Industry members have suggested that Commentary language indicating that a "firm" offer of credit must be made to those on the prescreened list is a new and more exacting requirement. The Commission believes that the Commentary accurately expresses the earlier interpretation. Although the earlier interpretation did not use the word "firm," the fact that the creditor planned to offer credit to all those on a prescreened list was the fact that enabled the Commission to conclude that prescreening was permissible under Section 604.

¹⁸ Trans Union Corporation, FTC Docket No. 9255 (administrative complaint, issued January 12, 1993).

¹⁹ This approach is taken, for example, in H.R. 421, introduced by Representative Charles Schumer, and in H.R. 670, introduced by Representative Matthew Rinaldo, which were in part the subject of the Commission's June 6, 1991 testimony.

posal, it would be permissible to prescreen a consumer's credit file if the consumer does not opt out of the prescreen pool after receiving published notice that he or she may do so.

The Commission believes that credit prescreening can serve a useful purpose. On balance, limiting prescreening seems preferable to prohibiting it altogether, provided that appropriate safeguards are incorporated to protect consumers' privacy. The firm offer of credit upon which, in the Commission's view, the permissibility of this practice has hinged seems to impose natural limits on the extent to which prescreening is used. This certainly is not the only way to place appropriate limits on prescreening, however, and an approach that permits prescreening but also provides consumers with a genuine opportunity to refuse to participate in the prescreening process has much to recommend it. It would give industry the latitude it seeks except when consumers object. In the Commission's view, if consumers choose not to make information from their personal credit files available for prescreening purposes, their wishes should be respected.

We have been told that some members of the consumer reporting industry voluntarily respect a consumer's choice to opt out of the prescreening process if a consumer contacts them about it. Very few consumers do so, however, because very few consumers understand what prescreening entails or even that it occurs. Because consumers are not equipped to make an informed choice independently, it is important that the consumer notification of any "opt-out option" be extremely clear about both the prescreening process and its implications for consumers. If consumers do not understand the option, the option will be meaningless.

Target Marketing

List sellers and those who sell consumer goods and services are always eager to obtain personal information about consumers' finances and lifestyles for marketing purposes. When they obtain such information from sources other than consumer reporting agencies, the FCRA is inapplicable. When credit bureaus supply such information on consumers from their consumer reporting data bases, however, the privacy protections of Section 604 come into play because the Commission views such lists as a series of consumer reports.²⁰

The Commission recently took two major actions dealing with the practice of target marketing by consumer reporting agencies. First, on January 12, 1993, the Commission issued an administrative complaint against Trans Union, challenging its alleged use of credit-related information to compile and distribute target marketing lists as well as the prescreening issues discussed earlier). Trial has been set for January 3, 1994. In the second action, TRW, in a modification of the 1991 consent order approved by the Federal district court in the Northern District of Texas on January 14, 1993, agreed to abandon use of all credit-related information from its consumer reporting database in creating target marketing lists. Under the consent order, TRW would only be permitted to use identifying information from its files in creating such lists.²¹

Unlike the TRW consent agreement's prohibition on use of credit information, S. 783 would permit credit bureaus to use certain types of credit information from their files in developing target marketing lists. While it prohibits disclosure of credit payment history, credit limits, credit balances or any negative information, S. 783 would allow credit bureaus to disclose about any consumer, without the consumer's consent, the existence, number and type of credit cards held by that consumer (e.g.,

²⁰ All of the permissible purposes for obtaining a consumer report enumerated in Section 604 relate to transactions that the consumer initiates by, for example, applying for credit, employment, insurance, a government benefit, or check cashing privileges or a lease. The consumer's wish to enter into a transaction with the person who receives the application provides that person with a legitimate reason for inquiring into the consumer's credit history. If a person could obtain access to a consumer's report simply because that person wished to do business with the consumer, no privacy protections would exist. As discussed in the earlier section on prescreening, a list of names and addresses that is produced by prescreening consumers' credit files constitutes a series of consumer reports and, as such, is subject to the privacy protections of Section 604.

The only circumstance in which the Commission has ever interpreted the FCRA to permit access to consumer reports in connection with a transaction that has not been initiated by the consumer is under Section 604(A), where it authorized creditors to obtain prescreened lists of consumers, but only with the understanding that those consumers would be given credit as a result. The Commission has never interpreted the Act to permit the dissemination of prescreened reports in any other context.

²¹ Under the order, only the following "identifying information" from TRW's consumer reporting database could be used to create target marketing lists: name, telephone number, mother's maiden name, address, zip code, year of birth, age, any generational designation, social security number, or substantially similar identifiers, or any combination thereof.

Jane Doe has 3 credit cards, including a gold American Express card, a bank-issued Visa card and a Neiman Marcus card), the existence and holder of mortgages and automobile loans, as well as employment and non-negative medical information. While this information may be of considerable interest to marketers, Congress may want to consider whether allowing this type of information about consumers to be used in creating target marketing lists would constitute an unwarranted invasion of consumers' privacy.²² Under the FCRA, consumers may consent to allowing access to their credit reports by third parties. Congress may wish to consider mechanisms by which consumers may voluntarily choose to be subject to broader use of their credit files for target marketing purposes, so long as this is done in a manner that protects consumers' privacy.

Impermissible Access Through Intermediaries

A different kind of privacy invasion occurs when persons obtain full consumer reports for impermissible purposes. For example, detective agencies sometimes have permissible purposes under the current Act for obtaining consumer reports, but routine investigative work would not provide a lawful basis for obtaining a consumer report. A detective agency would have a permissible purpose for obtaining a consumer report if, for example, it were acting as an agent of a creditor who was attempting to locate and collect on an overdue credit account or on a debt that had been reduced to judgment. However, except under these circumstances, obtaining a consumer report to investigate the assets, liabilities, and spending habits of an opponent in litigation would not be permissible.

It appears that businesses with impermissible purposes for obtaining reports sometimes obtain them through intermediaries whose standards for supplying reports are not always consistent with what the law requires. On April 14, 1993, the Commission finalized consent agreements with three information brokers or resellers.²³ The agreements address the procedures these consumer reporting agencies must follow when providing reports to mixed-use users, such as private detective agencies and attorneys. These agreements also contain fencing-in provisions which will provide added protection for consumers based on these companies' alleged past violations. Under the orders, the companies must, among other things, obtain written certifications from prospective subscribers about their intended use of the information, independently verify the subscriber's identity, and conduct periodic audits to determine whether the reports are being used for permissible purposes. In addition, on May 4, 1993, the Commission issued an administrative complaint against another reseller, WDIA, alleging FCRA violations.²⁴

Privacy protections must be enhanced whenever any consumer reporting agency sells reports to mixed-use users, because of the increased possibility that the mixed-use users may not have a permissible purpose for obtaining a given report. To provide such increased protection, S. 783 imposes an additional obligation on resellers of consumer reports, requiring them to disclose the identity of the ultimate end-user and that user's permissible purpose to the consumer reporting agency that provides them with the report. In addition, S. 783 would clarify that the FCRA requires resellers of consumer reports to establish procedures to ensure compliance with Section 604 permissible purposes, and to make reasonable efforts before selling the report to verify their customers' identifications and certifications of use. These steps will go a long way toward making sure that credit reports only get into the hands of those who have a legitimate right to see them.

Obtaining Reports Without Permissible Purposes

The Commission has recommended previously that Section 619 of the FCRA, which makes it a criminal law violation for any person to use false pretenses to obtain a consumer report, be extended so that obtaining a consumer's report for impermissible purposes or under false pretenses will constitute a civil law violation. At present, the FCRA makes using false pretenses to obtain a consumer report a criminal law violation. Only the Department of Justice is authorized to bring such actions: the Commission cannot address such conduct under the Act because it has no criminal enforcement authority.²⁵

²² 115 Cong. Rec. 2415 (January 31, 1969).

²³ I.R.S.C., Inc., Docket No. C-3422; CDB Infotek, Docket No. C-3423; Inter-Fact, Inc., Docket No. C-3424.

²⁴ W.D.I.A., FTC Docket No. 9258 (administrative complaint, issued May 6, 1993).

²⁵ The courts have held that consumers may bring such civil actions on their own behalf, when their reports have been obtained impermissibly. See, e.g., *Yohay v. City of Alexandria Employees Credit Union, Inc.*, 827 F.2d 967 (4th Cir. 1987); *Zamora v. Valley Federal Savings & Loan*, 811

An anomaly in the existing law is that although it is illegal for consumer reporting agencies to provide a consumer report to one who lacks a permissible purpose, it is not a violation for users of credit reports (unless they use knowingly false pretenses) to obtain a report without a permissible purpose. The Commission believes that anyone who obtains a credit report impermissibly should be subject to a Commission enforcement action. It is appropriate that the burden of preventing improper access be imposed on both consumer reporting agencies and users of consumer reports. S. 783 would prohibit access to a consumer report without a permissible purpose. This provision will fill in a significant gap in the Commission's existing enforcement powers.

Increased Privacy Protections for Consumers

S. 783 would help protect consumers' privacy by requiring consumer reporting agencies to include in the consumer's file records identifying the names of those who have obtained consumer report information on them and, upon request, their addresses and telephone numbers as well. Provisions requiring detailed identification of users are designed to enable consumers to determine whether those who have obtained copies of their consumer reports actually had permissible purposes for doing so. The Commission has supported similar provisions in legislation introduced previously that would ensure that consumer reporting agencies maintain records enabling consumers to identify persons who access their reports directly. However, the Commission has not evaluated the burdens associated with such a requirement. This provision could expose and deter impermissible access to consumer report information, but could impose administrative costs on consumer reporting agencies.

II. ACCURACY

The Commission previously has supported legislation that will promote greater accuracy in consumer reporting. Inaccuracies in consumer reports and the delay and frustration consumers experience in obtaining corrected reports are the primary subjects of consumers' complaints to the Commission. Some legislative proposals to improve the accuracy of reports that the Commission has supported in prior testimony are set forth below.

Standards for Furnishers of Information

One extremely important provision in any proposed reform of the FCRA is the imposition of a requirement that creditors and others who furnish information to consumer reporting agencies be held to a procedural standard of care similar to the one the FCRA currently imposes on consumer reporting agencies themselves. S. 783, rather than adopting a procedural standard of care in information reporting, would bar anyone from reporting information they knew or should have known was incomplete or inaccurate. Those who report regularly would have to correct and update information they determine to be not complete or accurate. While such a provision might result in some improvement in the overall accuracy of information available through the consumer reporting system, it may not provide the same improvement that is likely to result from a clearly defined procedural standard. The proposed provision also would impose a significant burden on the Commission's ability to establish law violations, due to the difficulty of proving knowledge on a case-by-case basis, as opposed to assessing the overall efficacy of procedures that furnishers of information have in place.

The expansion of the FCRA's coverage makes particular sense because it is creditors and other furnishers of information, not consumer reporting agencies, that have direct access to the facts of a given credit transaction. Ordinarily, the creditor is best situated to determine whether the information it reported was inaccurate or incomplete and to ensure its correction. S. 783's provision requiring the creditor or other supplier of information to reinvestigate promptly all disputed information and report back to the credit bureau is a positive step. The added requirement that all relevant information be reviewed should help ensure that creditors do not reverify without engaging in some reasonable form of reinvestigation. At present, there is no real recourse if the creditor simply confirms the misinformation after a cursory reinvestigation. When this occurs, it frustrates the consumer and the underlying purposes of the consumer reporting system as well—the dissemination of misinformation benefits no one. The consumer's ability to correct flawed information is central to improving the system's accuracy, and a change in the law should give con-

F.2d 1368 (10th Cir. 1987); *Hansen v. Morgan*, 582 F.2d 1214 (9th Cir. 1978). No criminal actions have been filed under Section 619 since its enactment.

sumers considerably more clout than they currently have in correcting false information in their files.²⁶

Congress may want to consider, as it has done with consumer reporting agencies, imposing the requirement that creditors and other furnishers of information have reasonable procedures in place to assure the accuracy of information they report, rather than limiting their obligations only to situations in which there is some knowledge of an error. Although most creditors maintain procedures that would meet such a standard, those who do not should not be allowed regularly to provide flawed information to credit bureaus with impunity.

Improved Disclosure Requirements

Section 615(a) of the FCRA requires that whenever credit, insurance, or employment involving a consumer is denied because of information in a consumer report, the user of the consumer report must so advise the consumer against whom such adverse action is taken and supply the name and address of the consumer reporting agency that supplied the report. The principal permissible purposes foil obtaining a consumer report under Section 604 of the Act are credit, employment, and insurance purposes, but subsections 604(3) (d) and (e) permit a user to obtain reports for other purposes as well. The Commission has previously recommended that any amendment to the FCRA expand Section 615 so that it is coextensive with the permissible purposes defined in Section 604 of the Act. This would mean that any person permitted by law to obtain a report must notify the consumer when the report leads to a decision adverse to the consumer's interests. At present, because these sections are not fully parallel, a landlord who turns down a prospective tenant based on adverse credit report information is not required to provide the same FCRA disclosures a creditor must provide when it denies credit based on that same information. The change that the Commission proposes would equalize the compliance burden on those who use credit bureau reports. It also provides the prospective tenant—and anyone else who is disadvantaged because of a consumer report—the same opportunity that the credit applicant has to learn when his or her credit history has played a key role in an adverse decision and to double check the accuracy of the credit report at issue. S. 783 accomplishes this by creating a definition of adverse action which is coextensive with permissible purposes under Section 604. It then modifies Section 615 to be triggered by such adverse actions.

As a general matter, the Commission has supported disclosure requirements, such as Section 615 disclosures, particularly when disclosures are made in a way and at a time that enables consumers to understand and exercise their rights. Consumers' ability to understand the content of their credit reports and the processes through which to dispute and correct inaccurate information is central to ensuring a reporting system that operates with maximum possible accuracy. Thus, the Commission supports the requirement in S. 783 that report users provide *written* notification to consumers when information in a consumer report leads to an adverse decision.²⁷ The Commission supports S. 783's requirement that the report users tell consumers of their rights under the FCRA in conjunction with making Section 615 disclosures. Under existing law, a credit bureau that furnishes a report that figures in the decision-making process must be identified by the report user, but consumers are never told that they have the right to a free report within a specified period after the adverse decision. Nor are they told of their dispute rights under Section 611. These disclosures are extremely important. They enable consumers to obtain a credit report free of charge if they act promptly. They also enable consumers to correct errors

²⁶ An enforceable, standard of care is necessary if consumers are to be able to better address creditor-generated errors. To some extent this will help address the problem of "mixed files"—consumer reports that are inaccurate because the credit bureau includes information about one consumer in a report issued on another consumer. If creditors are encouraged to provide more accurate and detailed identifying information about the consumers whose account history information they report, credit bureaus would be able to match information to consumers more accurately. Nonetheless, mixed files could still occur as a result of assumptions that credit bureaus make in matching up information supplied by creditors and other suppliers of consumer report information. When these assumptions are inaccurate or overly broad, consumers find information about other people included in their reports. This is a problem area in which credit bureaus, as well as creditors, must assume responsibility.

²⁷ This would simply legislate what currently is the custom with regard to credit applications. At present under the FCRA, oral notification will suffice. Most credit-grantors put these disclosures in writing, nonetheless, to provide a combined adverse action notice that complies with both the FCRA and the Equal Credit Opportunity Act, which requires written notification. Of course, because the ECOA only applies to credit decisions, this practice would not necessarily be the case outside of the credit context.

in their files, which benefits them and ultimately produces a more reliable database for the credit-granting industry.²⁸ Once again, S. 783 would accomplish these goals.

The Commission also supports the requirement in S. 783 that *all* information in the consumer's file at the time of the request be disclosed and that it be disclosed in written form. Most consumer reporting agencies currently provide hard copies of credit reports to consumers, which substantially assists consumers in carefully reviewing the information they contain. The requirement that all information be disclosed would create a small but significant change in existing law. Section 609 of the Act presently requires credit bureaus upon request to disclose the nature and substance of all information (except medical information) in their files to consumers as well as the recipients of any report made for employment purposes during the previous two years and for other purposes during the previous six months. The present exemption for medical information permits an insurer or, indeed, a creditor to have access to the consumer's reported health history but does not grant the consumer access to that information. Consumer access to all file information is important to ensuring its accuracy, and fairness is served when consumers know what is reported about them.

It has been noted in prior hearings that some consumer reports can be difficult for consumers to read due to the many codes and abbreviations they contain. In order to fully exercise their statutory rights, consumers must first be able to read and understand their reports. In light of this problem, the Commission supports in principle the provision in S. 783 which directs that consumer reporting agencies should develop disclosure forms which maximize the comprehensibility of disclosures. As drafted, however, it is unclear how this goal is to be achieved, and what role the Commission should play. Congress may wish to require only that the disclosure forms be understandable and non-deceptive to the reasonable consumer, and delete the requirement that the forms be standardized. Once the goal of comprehensibility is achieved, standardization may not be necessary.

Stronger Reinvestigation Rights for Consumers

The Commission has supported more specific guidelines with respect to a credit bureau's obligations when reinvestigating disputed information in a consumer's report. When information is inaccurate it is in the interest of consumers and industry alike to correct it as promptly as possible. Nonetheless, delay in the investigative process is a common complaint among consumers despite the current law's requirement that disputes be resolved in a "reasonable period of time."²⁹ The Commission supports the thirty-day time limit in S. 783 for credit bureaus to reinvestigate a disputed item and report back to the consumer. The thirty-day time limit tracks current industry guidelines and is consistent with past bills as well as the time period specified in the Commission's consent agreement with TRW. In the future, the industry should be able not only to meet but also to exceed this limit because it is now experimenting with electronic means of instantly communicating dispute information to its source. This will save days from the time the dispute verification form took to be mailed to the creditor and then back to the credit bureau upon completion of the reverification process.

Section 611 of the Act, which mandates procedures in case of disputed accuracy, does not currently require the credit bureau to notify the consumer of the outcome of its investigation, but simply to correct the report if it finds that it was inaccurate or no longer is verifiable. The Commission views the requirement in S. 783 that credit bureaus report to consumers on the results of their investigations as a salutary change. If the credit bureau must articulate its rationale, the consumer can better understand the process and, when appropriate, take corrective measures.³⁰ S. 783 would also require notice to the consumer if information that has been deleted from the consumer's file in the course of a reinvestigation is subsequently re-stored, a requirement that the Commission also supports.³¹ Strengthening and add-

²⁸ This change, along with the proposal that credit bureaus be required to notify report users of their obligation to make Section 615 disclosures, would effectively bring the disclosure of consumers' rights full circle. Credit bureaus would educate report users who, in turn, would educate consumers. Consumers whose credit reports result in adverse action would know their rights with respect to reviewing the report and how to correct any errors that the report may contain.

²⁹ FCRA Section 611(a).

³⁰ If, for example, a creditor erroneously confirms inaccurate information when the credit bureau reinvestigates, it is important for the consumer to know where the problem lies. The consumer can then shift his or her focus to the creditor who, under S. 783, would have an independent obligation to conduct a reinvestigation considering all relevant information submitted.

³¹ This requirement would help resolve the longstanding problem of automatic reinsertion of deleted information that occurs when a creditor fails to correct the computer tapes that it sends to the credit bureau each month. Although the creditor may agree that the consumer's version

ing greater specificity to consumers' reinvestigation rights is likely to be of great assistance to consumers who are best situated to correct misinformation in their reports.

Requirements for Adverse Action in Employment

The Commission supports in principle the proposal to afford consumers some protection against adverse employment decisions based upon a possibly inaccurate consumer credit report. Specifically, we support the requirement that employers provide actual or prospective employees with a copy of the consumer report together with a description of the consumer's statutory rights before taking any adverse action based on a consumer report. However, the Commission is concerned about the third requirement imposed upon employers in S. 783: that the employer provide the consumer with a "reasonable opportunity" to respond to any information in the report that is disputed by the consumer before the employer takes action based on the consumer report. The Committee may want to consider clarifying what is intended by the term "reasonable opportunity." In addition, we anticipate that requiring an employer to delay hiring decisions for any period of time will impose costs upon the affected businesses. Since we have no information about the magnitude of these costs, we are unable to determine whether the benefits of this proposal may outweigh its costs.

Access to Credit Report Information

Improved consumer access to report information may represent the single most effective and efficient method of detecting and correcting errors in consumer reports. The Commission recognizes that it is not in a position to quantify what may be substantial costs involved in increasing consumers' access to their credit reports. Thus, it is difficult to determine whether reports should be made available periodically for free or at cost, whether the cost of obtaining a consumer report in other circumstances should be capped at a specific dollar amount, or whether the period for obtaining a free report following adverse action should be extended.³² However, the Commission supports reasonable measures to aid consumers' review of their credit reports, whether in connection with credit denial or in connection with periodic review. Better consumer access to credit reports would facilitate consumers' efforts to detect and correct errors, reduce harm to consumers from errors, and improve the overall accuracy of the system. It would also educate consumers about the importance of developing and maintaining a good credit history.

On the whole the Commission believes that S. 783 would do a great deal to address serious, recurrent problems in the credit reporting industry. The Commission notes, however, one general concern. Although taken individually, the expanded disclosure and recordkeeping provisions should benefit consumers, the Commission knows from experience in some contexts that consumers may be overloaded with information, and that as a result many important points may be lost. Additionally, the Commission recognizes that the mandated disclosures and recordkeeping requirements involve costs. The Commission believes that it is important to consider the cumulative effect on consumers of increasing disclosures.

State Enforcement of the Federal FCRA

S. 783 would permit State Attorneys General to bring civil actions based on violations of the amended FCRA which occurred within their States. The Commission is concerned that this provision could result in inconsistent application of the FCRA nationwide. As the number of agencies enforcing the Act increases, so too does the potential for inconsistent enforcement and court decisions, especially when dealing with a statute as complex as the FCRA. In choosing cases and strategies, the Commission is in the best position to take into account the effect of precedent on issues affecting large numbers of consumer reporting agencies, users of consumer reports and consumers. It is also not clear why State enforcement is necessary, as each

of the dispute is correct, if the creditor fails to change its internal records the inaccurate information in the records may override the correction that the credit bureau has made. This provision in S. 783 would ensure that if such information is reinserted, the consumer would be made aware of that fact and thus be able to challenge the reinserted information before adverse consequences ensue.

³²The Commission notes that TRW Inc., one of the largest of the consumer reporting agencies, announced on October 14, 1991, that it has decided to provide each consumer with a free copy of his or her report annually, upon request. See Washington Post, Oct. 15, 1991, at D1.

State is fully able to adopt the FCRA in whole or in part as State law and then proceed to enforce its own law.³³

III. REGULATION OF CREDIT REPAIR ORGANIZATIONS

The Commission is pleased to find that the proposed bill includes provisions to address the problem of credit repair fraud. Fraudulent companies that lead consumers to believe that they can "repair" their bad credit histories have bilked consumers of millions of dollars in the past several years, have caused consumer reporting agencies to waste time and money reinvestigating spurious disputes, and have been the focus of numerous enforcement actions by the Federal Trade Commission.³⁴ S. 783 proposes that no credit repair organization be permitted to charge or receive any money prior to completion of the services that it has agreed to perform for the consumer. This approach to controlling abuses by credit repair organizations, which resolves the problem of making defrauded consumers whole when the perpetrator has fled, has been used in New York and Tennessee. Although stringent, it is an approach that the Commission believes is warranted given the credit repair industry's history of consumer fraud. The bill also would make credit repair organizations subject to the Commission's enforcement authority and would permit the Commission to invoke its civil penalty authority. The bill would provide consumers a private right of action as well. These measures should go far to reduce credit repair fraud.

In sum, S. 783 would do a great deal to address serious, recurrent problems in the credit reporting industry. The Commission appreciates the opportunity to comment on this bill.

³³ Moreover, the State enforcement scheme contained in S. 783 may raise constitutional concerns. In past formal comments on legislation in other areas, the Department of Justice has opined that direct State enforcement of Federal law may be unconstitutional because such schemes involve the exercise of significant authority pursuant to the laws of the United States by persons not selected in accordance with the Appointments Clause. Letter from W. Lee Rawls, Assistant Attorney General, United States Department of Justice, to the Honorable George J. Mitchell, United States Senate, October 18, 1990; see *Buckley v. Valeo*, 424 U.S. 1 (1976). We believe that it would be appropriate to draft legislation in the FCRA area consistent with any such constitutional limitations.

³⁴ See, e.g., *FTC v. Michael Jay & Co.*, Civil Action No. 91-0448 JMI (C.D. Cal., consent decree filed May 18, 1992); *FTC v. American Credit Services, Inc.*, No. 89-3651-KN (C.D. Cal., consent decree filed May 10, 1991); *FTC v. Credit Repair, Inc.*, No. 89-C-0344 (N.D. Ill., consent decree filed Mar. 7, 1990); *FTC v. Nationwide Credit*, No. 88-4071 (E.D. La., permanent injunction entered, Oct. 19, 1989); *FTC v. Steven Leff*, No. CA3-89-2046-H (N.D. Tex., consent decree filed Aug. 16, 1989).

SUMMARY OF STATEMENT OF
MARYLAND ATTORNEY GENERAL J. JOSEPH. CURRAN, JR.
BEFORE THE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
MAY 27, 1993

I urge support of Senate Bill 783 with amendments. Based on the experiences of Maryland we believe the credit reporting system can be improved by adhering to a few basic principles as set forth below:

We need to fully utilize the resources, energy and creativity of those government agencies responsible for overseeing the credit reporting industry; this means that both the states and the federal government need to play important roles.

Consumers must be provided with ready access to their credit reports, as they are the ones most knowledgeable about the accuracy of the information.

It is imperative that the American public is assured that we are hearing their concerns regarding their privacy rights. In that regard, we should not expand the use of credit reports for marketing purposes.

My full statement goes into greater detail concerning the above recommendation. I appreciate the opportunity to appear before this committee on matters relating to the Fair Credit Reporting Act.

STATEMENT OF J. JOSEPH CURRAN, JR.

ATTORNEY GENERAL OF MARYLAND

Mr Chairman and Members of the committee, thank you for the invitation to testify this morning.

There was a time when a home was the only purchase consumers made on credit. Today, Americans have become accustomed to financing everything from vehicles to appliances. We own and use over 900 million credit cards. In short, buying on credit has become a part of the American way of life.

Credit reporting agencies provide an important service to both businesses and consumers. By maintaining credit histories on millions of Americans, they reduce a business' need to conduct an independent investigation of each applicant. By providing that information to businesses expeditiously, they also reduce the time it takes for consumers to obtain credit.

When the Senate initially examined credit reporting agencies in the late 1960's, it concluded that the Federal Government needed to establish standards to insure that the information stored in people's credit reports was kept confidential, accurate, and current. To establish those standards it enacted the Fair Credit Reporting Act.

In recent years, as a result of technological advancements, aggressive marketing by credit reporting agencies and tighter credit and employment markets, more and more creditors and employers rely upon information contained in credit reports for their credit and hiring decisions. Unfortunately, as access to credit information has expanded, protections for consumers have not kept pace.

Revelations of the past several years have established that the purposes of the Fair Credit Reporting Act have not been fully achieved. Much of the information in credit reports is inaccurate. Much of it is no longer current. And in some instances the information is not treated confidentially.

When a consumer is denied credit solely because of inaccurate information in his or her file, that is certainly bad for the consumer. But it is also bad for the business losing the sale and for the creditor that would have extended credit but for the inaccurate information in the report. All parties to consumer transactions will benefit if we improve the present credit reporting system.

We can improve the system by adhering to a few basic principles, discussed in more detail later, but briefly stated as follows:

- We need to fully utilize the resources, energy and creativity of those government agencies responsible for overseeing the credit reporting industry. This means that *both* the States and the Federal Government need to play important roles.
- We need to fully utilize the resources and energy of those people who have the best knowledge about the accuracy of the information in credit reports. This means that all *consumers* must be provided ready access to their credit reports.
- We need to assure the American public that we hear their concerns regarding their privacy rights. This means that we should not expand the use of credit reports for marketing purposes.

The Important Roles Both the Federal Government and the States Need To Play

Both State and Federal officials receive high volumes of complaints from consumers about their problems with their credit reports. In Maryland, we receive thousands of inquiries and complaints a year. I know that the Federal Trade Commission also receives a large number of complaints. The single most frequent complaint is that the consumer's credit report contains inaccurate information.

I must stress these are not academic or technical complaints. Most of them arise because consumers have been denied credit *solely* on the basis of inaccurate information. For example,

- A Maryland couple wrote last summer, *"I am seeking your help again, as it seems that the credit reporting companies will not, or do not, have their acts together. I have sent the updated information, that was corrected by TRW reporting agency to Trans Union and Equifax, so they could update their records also on my behalf. . . . This information was to be corrected. I assumed that these corrections would be made by Equifax. BUT they did not pay any attention to the corrected information I sent them from TRW and as the records show there is still erroneous information being retained by Equifax in my credit profile."* Maryland's Commissioner of Consumer Credit was able to get the credit report corrected in about a month.
- A Maryland woman wrote Equifax, *"On Friday, September 11, 1992 . . . I was denied [a] loan because of two American Express Travel Related Services accounts reflecting outstanding balances . . . I never even had an American Express account, however was a cardholder on someone else's account. . . . Please be advised that I had this issue researched and resolved in 1987 with American Express. . . ."*

This is a grave error which should have been removed five (5) years ago. . . . My next contact will be with the Consumer Protection Agency and my attorney." When Equifax did not correct her report, she filed a complaint with the State and the Commissioner of Consumer Credit was able to get the report corrected in slightly more than a month.

—One of my own employees attempted to refinance his car and was told that he had no credit history. A check of Equifax's records showed that all his credit information had erroneously been placed under his father's name. It took three months to clear up the mistake.

—A letter received from a Maryland woman in February of this year shows, unfortunately, that even when an inaccuracy has been corrected, it can reappear. She wrote to Maryland's Commissioner of Consumer Credit, *"I really hate to be so bothersome with these unwanted and needless credit reporting errors, especially these erroneous reports in my profile that had been corrected in the past. . . . How do the credit information services blunder, so badly, in reporting a person's credit status. I truly believe these agencies are totally incapable of performing their duties as they should correctly. . . . After all the time and effort you put in straightening these credit profiles last year (1992), I would think they could keep them correct more than 6 months. See attached forms."*

Attached to my statement is a letter from Maryland's Commissioner of Consumer Credit, Alan T. Fell, summarizing his experience in handling consumer complaints against credit reporting agencies.

Maryland's experience has not been unique; consumers have registered similar complaints throughout the country. As a result, at least twenty States, including Maryland, have enacted their own form of Fair Credit Reporting Acts. These acts have provided significant relief to the citizens of those States and, at the same time, allowed all of us concerned about the problem to see how various legislative solutions work. For example, Maryland and Vermont give their citizens the right to get one free copy of their credit report each year. Vermont's law also provides that before a business can obtain a consumer's credit report, it needs either the consumer's consent or a court order.

In my opinion, the appropriate relationship between the Federal law and these State efforts to find workable solutions is to have the Federal law provide the floor of rights and responsibilities that apply, respectively, to consumers and businesses. However, States should be allowed to retain the additional protections they have seen fit to provide to their citizens. They should also be encouraged to attempt new legislative solutions to present or future problems.

I am pleased that Senate Bill 783 allows for this type of cooperative regulatory effort to exist between the States and the Federal Government. Consumers have benefited from a system that allows States to pursue their own laws and remedies, with concurrent enforcement by Federal agencies under the Fair Credit Reporting Act. In the last few years, for example, the States have brought a number of enforcement actions as a result of consumer complaints regarding inaccuracies in their credit histories. In 1991, 19 States brought an action and then reached a settlement with TRW, Inc. In 1992, multi-State settlements were reached with both Equifax and Trans Union.

The Federal Trade Commission has also been active in the area and as recently as this past January brought an action against Trans Union charging it with illegally using sensitive information about consumers' credit habits to create targeted telemarketing and direct mail lists.

Although the Federal Trade Commission has recently become active on these matters, the resources of that agency alone are insufficient to cope with the problems Americans are encountering with credit reporting agencies. The thousands of consumer inquiries and complaints that Maryland receives each year are a testament to the severity of the situation. The Federal Trade Commission alone is simply unable to address the thousands of individual consumer complaints and that task has been undertaken the States. The ability of the States to effectively handle these complaints is directly related to the strength of their enforcement powers.

Accordingly, of critical importance to the States is the provision in Senate Bill 783 that gives the States authority to enforce the Federal Fair Credit Reporting Act. This will clearly benefit the citizens of the 30 States that do not have a State fair credit reporting act. It will also benefit all Americans because it will give the States maximum flexibility to attack this problem through individual or multi-State actions.

There is ample precedent for allowing the States to enforce Federal law. State Attorneys General already have the power to enforce Federal antitrust and environmental protection laws, odometer laws, the Consumer Product Safety Improvements Act of 1990, the Nutrition Labeling and Education Act of 1990, the Telephone

Consumer Protection Act, and the Telephone Disclosure and Dispute Resolution Act. In fact, in Maryland we have had a history of success in protecting our citizens by pursuing enforcement of many of these Federal statutes.

The Important Role Consumers Must Play in Verifying Their Credit Reports' Accuracy

As I mentioned earlier, Maryland and Vermont have provisions in their laws that allow consumers to request a free copy of their credit report once a year. I would like to strongly recommend adding a similar provision to Senate Bill 783.

The frequency of inaccurate information appearing in credit reports can be reduced only if consumers are allowed to review for accuracy the information credit reporting agencies collect. Consumers are the *only* people who can readily identify inaccuracies in their credit reports. Quite frankly, I do not believe that there will be any significant improvement in the accuracy of credit reports until consumers are allowed to play that role.

The approach taken by Maryland and Vermont is a reasonable first step and a significant compromise from what might ultimately be required to correct this problem. I believe it might eventually be necessary to require that each consumer who has a credit report on file with an agency receive a copy of that report in the mail each year. As consumers, we currently receive—without having to request them—periodic reports from a variety of institutions, including statements from our banks, credit card companies and insurance companies. Credit reporting agencies that serve as a clearinghouse for information from a wide variety of sources could similarly provide a copy of the information they have gathered to each person in their files.

Maryland has chosen not to take that step at this time. Instead, since 1992 credit reporting agencies have been required to provide, to each consumer who requests one, a free copy of his or her credit report. We will have to evaluate in the next couple of years whether this free request system has significantly reduced the error rate in credit reports. If it hasn't, we will have to consider other approaches.

I recommend that you consider giving all the citizens in this country the same right that the citizens of Maryland and Vermont now have, namely to find out quickly and at no charge whether their credit reports contain inaccurate information. Identifying inaccurate information will benefit not only those consumers, but all businesses relying upon the information in those credit reports.

Maintaining the Privacy of the Information Collected by Credit Reporting Agencies by Limiting The Uses of the Information to Those Permissible Under the Original Fair Credit Reporting Act

One issue of concern to me is whether a credit reporting agency should be allowed to maintain and sell mailing and telemarketing lists to third parties without the knowledge or permission of the consumers whose credit histories are used to create the lists. This practice is known as target marketing.

The current law provides in Section 604 that “[a] consumer reporting agency may furnish a consumer report under the following circumstances and *no other*.” (emphasis added.) The enumerated circumstances do not expressly permit the use of the information for target marketing.

When financing a purchase, consumers have a reasonable expectation that the lender will run a credit check. Consumers do not, and in my view should not, have a reasonable expectation that information in their credit histories will be used to compile consumer lists for businesses' marketing purposes. I do not believe there is a legitimate public policy basis upon which to expand the “permissible purposes” under Section 604 of the Act, to “targeting” consumers, without their permission, for general marketing purposes.

Some may feel that a provision allowing consumers to “opt out” of having one's name on such marketing lists is an adequate protection. I disagree. Most consumers have little knowledge about credit reporting companies and even less about how mailing lists are devised or how to remove one's name from them. The burden should be on the marketer to obtain the consumer's permission, not upon the consumer to “revoke” the permission. In Maryland I am continually asked by my constituents how they can protect their privacy by, for example, stopping unsolicited mail and telemarketing promotions, both of which they regard as infringements on their private lives. Until the public expresses a contrary desire, I would urge the Senate not to expand the permissible uses of information in credit reports and, instead, to retain the current prohibition against target marketing.

Views of the Other State Attorneys General

I have appreciated having this opportunity to share my views on this important problem with you. The Attorneys General of the other States share many of my views.

Attached to my statement is a copy of a resolution adopted at the spring meeting of the National Association of Attorneys General. I supported this resolution and, as you can see, it seeks Federal legislation containing all of the major points that I have mentioned, namely:

- providing a strong unified approach by the States and the Federal Government in which the States are allowed to use solutions that exceed the floor requirements established by the Federal law.
- allowing the States to continue to take affirmative steps to protect their citizens by seeking to enforce the Federal law in State or Federal court.
- affirmatively seeking the consumers' involvement in the accuracy verification process by allowing them to receive upon request one free annual copy of their report.
- limiting the uses of the information in consumers' credit reports to those allowed by the present law, and not expanding those uses by allowing the information to be used for target marketing.

Thank you for allowing me this opportunity to share my thoughts with you. The Attorneys General look forward to working with you and your staff on this important legislation.

STATEMENT OF ALAN T. FELL

COMMISSIONER OF CONSUMER CREDIT, STATE OF MARYLAND

I would like to lend my voice in strong support of the testimony submitted to you by our State Attorney General, J. Joseph Curran, Jr. He speaks for all Marylanders, both businesses and consumers, who want to ensure accurate, complete, and up-to-date credit reporting.

In addition to regulating the lending industry in my State, I also have the statutory responsibility to handle all complaints and inquiries about consumer credit reports. My staff is on the front lines seeing that credit reporting agencies, and creditors, respond expeditiously to consumers with questions or concerns about their credit profile.

Maryland is one of four states that have taken a leadership role in the enactment of carefully balanced legislation which serves the consumer interest without placing unnecessary or undue burdens on the industry. Many of the proposed changes to Federal law which you consider in Senate Bill 783 mirror Maryland's statute. Collectively, my staff and I know that it takes the tandem effort of Federal and State agencies to address the problems which arise. In our experience, the resolution of consumer complaints on an individual basis had been largely undertaken by the States.

Particularly since recent amendments strengthening the Maryland law (which were described in accurate detail by Attorney General Curran), it is my agency's experience that TRW, Equifax and Trans Union have recently been very cooperative in resolving complaints, and in changing certain practices which we have pointed out as being unfair to consumers. We see a causal relationship between Maryland's new law and that cooperative spirit. If Federal law were to preempt State regulation of credit reporting agencies, we believe there would be significantly diminished incentive for the industry to cooperate in resolving individual complaints.

We therefore would oppose any attempt to reintroduce the "poison pill" amendment which appeared in last year's House Bill which would preempt virtually all authority for State legislatures to enact regulatory measures in this area.

Thank you for permitting me to present my views on this important consumer legislation.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

RESOLUTION—FINANCIAL PRIVACY AND CREDIT REPORTING

ADOPTED SPRING MEETING, MARCH 28–30, 1993, WASHINGTON, DC

WHEREAS, the credit reporting industry in this country annually processes billions of confidential data concerning the private financial matters and payment histories of millions of Americans and annually provides over four hundred million consumer credit reports to business subscribers; and

WHEREAS, Congressional testimony confirms that numerous serious errors exist in consumer credit reports; and

WHEREAS, several States have sought to improve credit reporting practices through enforcement actions aimed at credit bureaus; and

WHEREAS, in many instances the only reinvestigation of data in credit reports that is conducted by a credit reporting agency consists of reverification that the data exists in the computer data banks of the creditor and does not in fact verify that the underlying information is actually accurate; and

WHEREAS, although creditors use the information in credit reports for a variety of legitimate and worthwhile reasons, such as decisions on the amount and nature of credit to be extended, a need exists to improve oversight over how credit reports are used; and

WHEREAS, credit reporting agencies use information from credit report databases to create and maintain their "target marketing" databases, which are currently unregulated, without the knowledge or permission of the consumers whose data are used; and

WHEREAS, unscrupulous operators of "credit repair" organizations deceptively promise to improve consumers' credit reports by removing damaging information in the credit reports, when (1) in many cases the damaging information is accurate and cannot be removed and consumers therefore pay millions of dollars each year to these businesses without having their negative credit reports improved and (2) in nearly every case the credit repair organization cannot do anything consumers cannot do themselves at little or no cost;

WHEREAS, fair credit reporting laws have been enacted in twenty States and a number of legislatures are either considering new legislation or strengthening State laws to (1) improve consumer credit report accuracy and privacy and (2) require credit reporting agencies to provide without charge, upon request of the consumer no more than once annually, a copy of his/her credit report; and

WHEREAS, H.R. 1015, the Consumer Reporting Reform Act of 1993, has been introduced to strengthen the Federal Fair Credit Reporting Act (FCRA) and make it easier for consumers to contest and correct false information in their credit reports, obtain a free copy of their credit report annually, and enhances consumer privacy by further prohibiting the use of credit reports for target marketing; and

Now, Therefore, Be It Resolved That The National Association Of Attorneys General:

(1) supports Federal legislation such as H.R. 1015 to amend the Federal Fair Credit Reporting Act (FCRA) in the following areas:

CONSUMER CREDIT REPORT ACCURACY

a. requiring credit reporting agencies to institute improved procedures to insure the accuracy of credit reports;

b. requiring credit reporting agencies to reinvestigate fully any inaccurate or obsolete information in a credit report when the consumer requests it, and to provide the consumer a written summary of the results of the reinvestigation within 30 days or less;

CONSUMER ACCESS TO CREDIT REPORTS

c. requiring credit report users, whenever credit is denied based on information obtained from a credit report, provide greater disclosures to consumers, including (1) the credit reporting agency from which the credit report was obtained; (2) the means by which the consumer may obtain without charge a copy of that credit report; and (3) a statement of the consumer's rights under the FCRA;

d. requiring credit reporting agencies to provide without charge, upon request from a consumer no more than once annually, a copy of the credit report itself (and not just a summary of its "nature and substance") on that consumer and a statement of the consumer's rights with respect to that report under the Fair Credit Reporting Act;

BUSINESS ACCESS TO CONSUMER CREDIT REPORTS

e. requiring credit reporting agencies to institute procedures to prevent disclosure of any information in a credit report to anyone who is not specifically authorized by the FCRA to receive such information and to prohibit credit reporting agencies and credit report users from using credit reports for any purpose not specifically authorized by the FCRA; and

f. further prohibiting the practice of "target marketing," or selling a consumer's credit report to companies engaged in direct marketing of products without the consumer's permission; and

EXPAND SCOPE OF FCRA COVERAGE

g. bringing within the scope of the FCRA persons who furnish information about consumers to consumer reporting agencies, and require such persons to follow procedures necessary to insure the accuracy of information provided and to notify the consumer prior to the submission of such information about that consumer to the credit reporting agency; and

h. bringing within the scope of the FCRA information obtained for landlord and check cashing purposes; and

CREDIT REPAIR CLINICS

i. prohibiting or regulating credit repair organizations, including provisions (1) prohibiting a credit repair organization from collecting any fees prior to performing its services for the consumer; (2) prohibiting any claim that an organization can in fact repair negative credit information; (3) requiring disclosures, before consideration is paid by the consumer, of what services will be provided and at what cost, that accurate information in the consumer's credit file cannot lawfully be removed within the reporting time periods set by law, and the credit repair organization's past performance record in assisting consumers in "repairing" their credit; (4) providing for bonding and registration; (5) prohibiting false advertising and deceptive or unfair practices by such credit repair organization; (6) providing a three-day right of cancellation or cooling off period for consumers who enter into contracts with credit repair organizations and requiring clear and conspicuous notice to consumers of such cancellation rights; and (7) providing effective enforcement and remedial measures, including private remedies for damages, costs and attorney fees, and enforcement by State Attorneys General and the Federal Trade Commission; and

NO STATE LAW PREEMPTION

j. opposing Federal preemption of State fair credit reporting laws; and

ATTORNEY GENERAL FCRA FEDERAL COURT ENFORCEMENT

k. authorizing State Attorneys General to enforce the entire FCRA in State or Federal court; and

(2) authorizes its Executive Director and General Counsel to transmit these views to Congress, the Federal Trade Commission, industry and consumer groups, and other interested parties.

Abstain: Attorney General Stenberg

STATEMENT BY BARRY CONNELLY

EXECUTIVE VICE PRESIDENT, ASSOCIATED CREDIT BUREAUS, INC.

I am Barry Connelly, Executive Vice President of the Associated Credit Bureaus or ACB, as we are commonly known. ACB is the trade association representing nearly 1,000 consumer credit and mortgage credit reporting companies in the United States.

As you requested, my testimony will attempt to assess how well the proposed legislation, S. 783, will address the issues of accuracy and privacy in the credit reporting industry as well as its probable impact on the credit reporting industry, consumers and the enforcement of State consumer protection laws. In addition, I would like to indicate a number of points of concern to ACB's members about provisions in this bill.

The credit reporting industry is moving voluntarily to change industry procedures to improve service to consumers. These voluntary initiatives will be the mandatory operating guidelines for all of our members. Past legislative and regulatory actions played some role in motivating our actions, but I can say proudly to you today that members of the industry met and voted to develop these new procedures and decided to make them mandatory for all ACB members.

If you compare your bill and our new initiatives, you will see immediately that we listened and we learned. Our commitment to the consumer is not new. It is an integral part of how we conduct our business whether in regard to the accuracy of our file information or to the protection of those files.

Accurate data reflect the quality and value of the credit reporting industry's product. It is the goal of our members to achieve and maintain credit reports which are free of any errors.

ACB has set up a number of task force groups to address the question of accuracy from several perspectives. We feel very positive about the progress these groups are making. One of our major efforts to improve the accuracy of the information in our members' files is in the pilot program stage—and, we hope, will be on line shortly. The ACB Automated Consumer Dispute Verification Process is the product of a joint effort from an ACB task force and a credit grantor steering committee.

It is our goal to provide to the consumer quality service whether seeking disclosure or reinvestigation of information contained in their credit reports. There should be no impediments to consumers in obtaining and understanding their credit reports. Credit reports should be available in a format which is clear, concise and easy to read. Disclosure and reverification should also take place in a timely manner. Within three business days after being contacted by a consumer, a credit bureau will respond by mail to a request for disclosure of the credit file. Credit bureaus will not charge more than \$8 to a consumer who requests' disclosure, but has not been denied credit. A consumer is entitled to request and receive a free report within 60 days, which is 30 days more than the law requires, after being denied credit by a credit grantor.

The third category of major concern to consumer reporting agencies—privacy. Any unauthorized access of information in our files is unacceptable. We strongly reaffirm our policy that a consumer's medical history will not be gathered or provided in reports for credit or employment purposes. We do not have any medical health data about the consumer in the file.

We have tightened the strict procedures regarding service to brokers and resellers of our information; we have established opt-out procedures on an industrywide basis to accommodate consumers who choose not to be included on prescreening and direct marketing mailing lists. We encourage stricter enforcement of the Fair Credit Reporting Act and the Computer Crime Act of 1984 regarding those who through fraudulent actions, violate the permissible purposes section of the act. ACB members have advocated giving both the consumer and the credit bureau a cause of action when personal credit information is illegally accessed.

Now I would like to address some specifics of S. 783. We encourage our members to carefully consider all information provided by consumers concerning a dispute of information in their file, but we object to the expansion envisioned in sec. 104(f). It could require inclusion of any information that the consumer might wish to add to the file. This section creates a large opportunity for credit clinics, credit repair organizations and credit service organizations to erode the integrity of the data base.

In sec. 111 the bill inserts a new section of the FCRA establishing duties for furnishers of information to consumer reporting agencies. This section creates for the furnishers of credit data a disincentive to provide information regarding consumers.

Section 111 of S. 783, responsibilities of credit grantors as they furnish information to consumer credit reporting companies, is a punitive provision when coupled with the civil penalties, enforcement authority granted to the Attorneys General and private rights of action. If passed, it could have the effect of closing down the free flow of consumer credit information which allows our credit economy to flourish in a manner unmatched by any country.

Credit grantors should be applauded for furnishing information and encouraged to do so, not discouraged from doing so. It is the availability of that information in the credit bureau file that sells goods and creates jobs. It is that information that allows a consumer in Nevada to buy a car made in Michigan with one visit to an automobile dealership. Those credit purchases translate into jobs, and whatever the Congress does in the name of accuracy or privacy that discourages that kind of commerce will only hurt your constituents more than help them.

Credit bureaus are implementing a number of new policies and reviewing procedures to enhance consumer privacy. We think it is evident that industry policy and initiatives respond vigorously to most of the concerns addressed in S. 783.

While we are encouraged that the diligent work of this Committee has focused on these same issues and reached many of the same conclusions, quite candidly we are extremely wary of these changes being codified into law. While we are not supporting a legislative solution, this should not be construed that we are an uninterested bystander in the legislative process. Conversely, we seek to continue the meaningful dialogue that has characterized this debate so far. It is in that spirit of cooperation and commitment that our industry comes before you today.

We must express caution to those who would seek to place additional restrictions, liabilities and burdens upon our industry. Under this bill the multitude of problems

that face the credit industry range from the question of compliance with credit laws and interpretations in 50 States to the imposition of major civil and administrative liability for the hundreds of thousands of creditors who furnish credit data to the credit reporting agencies each month.

We believe that uniformity is a pro-consumer position. It would result in more and stronger enforcement of the FCRA. The industry supports Federal preemption of additional and extraneous State laws and believe that the failure to include preemption in S. 783 is a major flaw in the bill.

Ours is an industry deeply involved in interstate commerce. Numerous provisions in this bill make references to credit reporting agencies operating on a nationwide basis. Yet our members are still subjected to having to meet requirements on a State-by-State basis which adds tremendously to the costs of trying to serve the consumer. We are not asking for a lessening of our responsibilities; we are asking for consistent treatment under the law. I think there is agreement among all parties in the credit industry—credit bureaus, credit grantors, credit data furnishers—that there is a compelling need for uniformity.

Another matter which reappears with regularity is a proposal that credit bureaus be required to provide annually a free disclosure upon request to consumers who have not been denied credit, but who wish to review their file. We strongly oppose this proposal for several reasons not the least of which is the dangerous precedent established by Congress requiring a private business to give away its product. The decision to provide a "free" anything is a marketplace decision that should be left up to the management of each business.

We cannot emphasize strongly enough the negative impact such an edict would have on small credit bureau businesses in your State. You are not only affecting three multimillion-dollar corporations. You are impacting the bottom line of small businessmen and women in Hyannis, Massachusetts, and Ironwood, Michigan. Nevertheless, even these businesses are limited to charging no more than \$8 for a disclosure under ACB policy. Consistent with our opposition to a legislative mandate that a business give away its product for free, our members oppose the legislative mandate of providing toll-free telephone service. How, where, and when to provide toll-free access to a company should be an individual company marketplace decision.

ACB also objects to the FTC civil penalty authority granted in sec. 113. Under current law, the FTC has the authority to issue consent orders and agreements to ensure compliance. For more than 20 years this has been an effective means of enforcement.

Mr. Chairman, your invitation letter raises an issue I feel compelled to address before I conclude my testimony. ACB members were very concerned about a Federal Trade Commission statement made during a Congressional hearing last year that the FTC received 10,000 consumer complaints and inquiries about credit reporting in 1991. Our concern led us to file a Freedom of Information Act request with the FTC on April 13, 1992, in which we asked for copies of all complaints regarding credit bureaus filed with the Commission during the first quarter of 1992.

It took the Commission six months to complete the FOIA request and deliver all the documents to ACB. ACB analyzed the material received, and a copy of that analysis is enclosed. First, the total number of consumer complaints and inquiries provided to ACB was 578. Careful analysis of these 578 complaints and inquiries showed that 205 were unrelated to credit bureaus or the FCRA. Using the most generous definition of a credit bureau complaint, we found 373 actual consumer complaints about credit bureaus. If we were to project these numbers for the calendar year 1992, we would conclude that the Commission received something in the neighborhood of 1,492 actual complaints.

Obviously, a total of 1,492 credit bureau complaints in 1992 would represent a dramatic reduction from the 10,000 complaints and inquiries the Commission received about credit bureaus in 1991. It could be that the Commission's calculation of credit bureau complaints and inquiries was flawed or in error, and we felt it important to bring this disparity to your attention.

Mr. Chairman, we are doing a better job of serving consumers. We feel that we are a progressive industry responding to the needs of the consumer. As many are aware, last Congress the credit reporting industry actively supported H.R. 3596. Even while we were undertaking the effort to address these issues voluntarily, we worked for that legislation to be enacted into law. Unfortunately, our efforts went for naught as the bill died on the House floor. Nevertheless, we certainly developed a healthy appreciation for the pitfalls and problems associated with the legislative process. Accordingly, we pause when faced with a similar situation in this Congress. We take relief in the fact we are voluntarily achieving the desired results where the legislative process failed last year.

I appreciate the opportunity today to represent the Associated Credit Bureaus before the Senate Banking Committee and I will be happy to answer any questions you may have.

TESTIMONY OF MICHELLE MEIER

COUNSEL FOR GOVERNMENT AFFAIRS, CONSUMERS UNION
ON BEHALF OF THE BANKCARD HOLDERS OF AMERICA
CONSUMER FEDERATION OF AMERICA AND U.S. PIRG

Consumers Union¹ appreciates the opportunity to testify on S.783, a bill amending the Fair Credit Reporting Act (FCRA) and co-sponsored by the Chairman of this distinguished panel and Senators Richard Bryan and Kit Bond. On behalf of the Bankcard Holders of America,² Consumer Federation of America³ and U.S. PIRG,⁴ we applaud the bill's co-sponsors for pushing forward with reform legislation after the disappointing failure to get the reform package passed last year. We look forward to working with you and your staff as the reform legislation breezes through the new reform-minded Congress and into law, hopefully within the next couple months.

We believe FCRA reforms are critical to serve two broad objectives. First, reforms are needed to improve the accuracy of credit reporting. Second, reforms are needed to better protect the privacy of credit files.

To accomplish both these goals we also need better compliance with the law, which requires better enforcement tools. Injured consumers, the most reliable source of accountability in the marketplace, currently have very weak tools to recover either compensatory or punitive damages when businesses shirk their basic legal duties under the FCRA. The Federal Trade Commission (FTC) also needs broader authorities and responsibilities to monitor the various businesses involved in credit reporting, as well as improved tools to interpret the law and enforce it.

We are pleased that S.783 contains some of the steps that are needed to achieve these objectives. As you know, we will be working to try to ensure that final legislation contains all the most critical reforms, including those omitted from S.783.

We appreciate the significant decision the sponsors of S.783 made in abandoning the preemption issue that brought the reform effort to a shrieking halt last year. Of course, we regret that step has come at the cost of critical reforms, including the free annual report that was included in last year's bill but is omitted from S.783. On the bright side, with the preemption debate behind us we can focus on ways to help consumers, rather than the banking and credit reporting industry.

Background—Why Reform Legislation is Needed

Credit reports are riddled with errors

- The Federal Trade Commission reported in 1991 that it receives more consumer complaints about credit reporting companies than any other American industry. Between mid-1990 and mid-1991, the agency received 9,000 complaints, a 50 percent increase over the previous year's volume.
- A 1991 report released by Consumers Union showed that 48 percent of the credit reports reviewed for the study contained inaccurate information, with 19 percent containing major inaccuracies.

¹Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from non-commercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with approximately 5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

²Bankcard Holders of America is a national non-profit organization focused exclusively on consumer credit education and advocacy. BHA is supported by 75,000 consumer members nationwide.

³Consumer Federation of America is a non-profit consumer advocacy organization representing more than 250 local, State and national consumer groups with a combined membership of more than 50 million Americans.

⁴U.S. Public Interest Research Group is a national nonprofit, nonpartisan, research and advocacy organization. The group serves as the Washington, DC lobbying office for state PIRG's across the country.

Many consumers find it difficult or impossible to get the errors corrected

- A 1991 report released by U.S. PIRG showed that many consumers who eventually bring their credit bureau problems to the FTC first try repeatedly, without success, to get the bureau to correct the problem. Among a random sample of consumers who eventually prevailed upon the FTC for help, the consumers on average waited 5 months for the bureaus to correct the problem, without result, before turning to the agency for help.
- **Banks and finance companies are a major part of the problem.** The information maintained by credit bureaus is only as good as the information they receive from these credit granting institutions. Frequently, after a consumer has succeeded in getting inaccurate information deleted from his credit file, the same inaccurate information will pop up again in the same bureau's report. Why? Because the bank or finance company that originally supplied the false information to the bureau has not deleted the inaccuracy from its files.

Credit files can be accessed with little regard for consumers' privacy interests

- Credit files can be accessed with amazing ease. In a 1991 study by the New York Department of Consumer Affairs, 35 percent of the credit bureaus listed in the New York City phone book were willing to send another person's report to the investigator without taking even minimal steps to verify the investigator's identity or the purpose for which the investigator intended to use the report.
- Under current Federal law, a business or individual, including your boss, can obtain a credit report without notifying you or obtaining your permission.
- A 1990 Harris poll commissioned by Equifax indicated that privacy is a key concern among consumers.
- A strong majority (76 percent) of the Harris study participants drawn from the general public found it "NOT ACCEPTABLE" for bureaus to use sensitive credit files for direct marketing purposes when asked the following question: Some companies want to identify consumers with a certain income and a good credit history, to send them an offer for a premium credit card or a product. They ask credit reporting bureaus to screen their computerized files for those who meet the requirements and then supply just the consumer's name and address. However, they do not get the consumer's advance permission. Do you feel this practice is acceptable or is not acceptable?

THE BILL WILL HELP CORRECT THE INACCURACY PROBLEM—BUT A FREE ANNUAL REPORT AND CREDITOR LIABILITY FOR VIOLATIONS ARE CRITICAL TO SOLVING THE PROBLEM

Although the bill includes several reforms designed to improve accuracy, it omits others that are critical.

On the positive side, the bill:

- Establishes a 30-day time limit for bureaus to reinvestigate information disputed by the consumer; any information that is not verified within that time frame must be deleted. This will help keep bureaus from dragging their feet for months.
- Expressly requires bureaus to *permanently* delete information that they are unable to verify during the reinvestigation process, unless it is later "certified" as correct by the original supplier. This will keep the same mistake from popping up again and again, a common problem.
- Requires bureaus to establish a toll-free 800 number to communicate with consumers. This will help dismantle one hurdle—the expense of long-distance tolls—that prevents consumers from getting mistakes corrected.

While these reforms are useful, they may fail to achieve the objective of increased accuracy unless the bill is strengthened in several ways:

- **The bill should give consumers the right to receive a free report from each of the three major reporting companies at least once each year upon request.** Although consumers are currently able to get a free report when their report is the basis on which they are denied credit, consumers need easy before-the-fact access to their files. This way they can get mistakes corrected before the mistakes cost them the loan, the mortgage, or the job they need.

Since this reform effort began, the bureaus have reduced the price of their reports to consumers. Only two years ago, consumers could be forced to pay about \$20 per report, costing a single consumer about \$60 for a report from each of the "Big Three" companies, \$120 for a couple. At \$8 a pop now, bureaus are still charging more than some consumers can afford just to find out what the bureaus are saying about them. At this rate, single consumers must pay \$18 for a report from all three companies; couples must pay \$36.

The voluntary price reductions of the recent past not only leave the price too high. They are also fatally flawed because they are voluntary—and only came after the industry came under intense public scrutiny and criticism. Unless an annual free report, and subsequent report price caps, are put into law, bureaus are likely to go back to their extortionist ways after the current blare of public attention dims.

- **The bill should impose basic duties on banks and other businesses that regularly supply information to bureaus to help ensure that they report as accurately as possible under reasonable business practices, expeditiously correct inaccuracies, and notify bureaus of the results of their reinvestigations—and hold banks and the other businesses accountable for shirking the reforms.**

Although S. 783 gives to consumers with one hand by imposing some of these basic duties on those businesses that supply information, it takes from consumers with the other by expressly exempting those businesses from virtually all liability if they fail to comply. As far as we know, there is absolutely no precedent in this committee for establishing consumer protections with one hand but taking them with the other by exempting banks from all private rights of action by injured consumers. Such an exemption not only nullifies the benefit of the reform, but it undermines respect for the law generally.

Traditionally, lawsuits by injured consumers have created the principle incentive for banks and others to comply with consumer protection laws. Locking consumers outside the courthouse door removes that incentive. True, S. 783 retains the authority of the government to sue a bank for violating the law. But the FTC and many States often lack either the will, or the resources, to bring businesses to court for violating the law. Those with the biggest stake in making sure banks comply consumers themselves—should not be barred from pursuing their rights in the courts—and creating positive incentives toward compliance in the process.

- **The bill should improve the civil liability rules of current law.** Traditionally, Congress encourages compliance with the laws it passes by imposing strict penalties on those who fail to comply. Ever since its original passage, however, the FCRA has contained extremely weak civil liability provisions that, to a large extent, allow the credit reporting industry to violate the law with impunity.

For example, under current law consumers can recover no minimum statutory damages for non-compliance. Unless the consumer can prove “willful” non-compliance, a virtually impossible task, the consumer can only recover actual damages, which in many cases, even those involving egregious hardship for the consumer, may be unquantifiable in monetary terms. Even to recover actual damages, the consumer must not only prove non-compliance—he must shoulder the burden of proving that the bureau’s non-compliance was the result of the bureau’s negligence, another very difficult and costly proposition.

In short, the industry scored a major victory when FCRA was first enacted some 20 years ago by getting Congress to adopt these weak civil liability provisions. These provisions are far weaker than even those found in the Truth-in-Lending Act and other consumer laws in the financial services area. They give the industry little incentive to conform with either the letter or the spirit of the law.

S. 783 improves the current situation by making statutory damages available in the case of “willful” noncompliance. The Truth-in-Lending Act goes one step further by making statutory damages available without the need to show that the violation was “willful.” As S. 783 moves through the legislative process, we hope that additional teeth can be put in the civil liability provisions so that credit bureaus and others will take their new responsibilities seriously.

Stronger Provisions Are Needed To Address The Public’s Concerns About Privacy. We believe that a consumer’s credit report file should only be disclosed to persons after the consumer has authorized the disclosure and only for the purpose authorized. We commend the bill for requiring consumer authorization when a file is accessed for certain purposes, including employment, but we hope this privacy protection will be extended to cover all circumstances involving third party access, including pre-screening.

Although the FTC interprets current law to prohibit pre-screening for all forms of target marketing except the marketing of firm offers of credit, pre-screening goes on nevertheless. Unless Congress eliminates the current legal ambiguity, the practice that so many consumers find invasive and offensive will simply continue.

Of course, the “consumer consent” principle we embrace would not allow any kind of pre-screening, for credit granting or other purposes, unless the consumer affirmatively “opts in.” We are very disappointed, then, that the bill weakens the FTC’s current rule by authorizing all forms of pre-screening, including pre-screening for

direct marketing purposes, under an "opt out" approach. At a time when many consumers are already overextended in debt, and most consumers are already inundated with offers of credit, we believe it is bad public policy to accommodate an industry practice that only encourages greater consumer indebtedness and junk mail—particularly when important principles of consumer privacy are compromised in the process. By extending the opt-out approach to all direct marketing purposes, and by loosening the "firm offer" definition in the case of credit pre-screening, the bill dismantles existing privacy protections when they need to be tightened.

Section by Section Discussion

The balance of our testimony comments on specific provisions in the bill, in the order in which these provisions appear, raising technical concerns and offering recommendations. Because of the time constraints we faced in preparing for these hearings, we may submit additional comments at a later time.

Sections 101 and 109 (Adverse Action Notices)

Section 101 of the bill defines the term "adverse action" for purposes of section 615 of the Act. Under current section 615, creditors and insurance companies are required to notify a consumer if the consumer is denied credit or insurance, or the charge for credit or insurance is increased, because of information contained in a credit report. Employers are also required to notify the consumer if the consumer is denied employment on the basis of a credit report. With section 101's new definition, and amendments to section 615 contained in section 109 of the bill, consumers will be notified *whenever* a credit report is the basis, in whole or in part, on which any action adverse to the consumer—including, for example, the denial of a rental unit or check cashing services—is taken.

We believe these changes will help alert consumers to the key role credit reports play in their lives. Because consumers are entitled to a free report when they receive an adverse action notice, these changes will also help improve the accuracy of credit reporting.

Section 102 (Employment Uses)

This section generally prohibits an employer from accessing an employee's file without first obtaining the employee's permission. This general prohibition is a strong and necessary privacy protection. On the other hand, the bill allows employers to access employee files with only a general authorization form. This means the employer could force the employee to sign away his privacy interests for his entire job tenure by signing a general authorization form when first hired. We believe employers should get a consumer's permission each time they wish to peek into their employees file.

Sections 103 and 109 (Prescreening Opt-out Procedures)

Here the bill describes the steps the credit reporting industry must take to facilitate the consumer's right to opt-out of a bureau's pre-screening activities. Under section 109, creditors and others that make solicitations based on pre-screening activities must notify consumers about their opt-out right and how to exercise it. Additionally, in section 103 bureaus engaged in pre-screening must run newspaper advertisements on an annual basis to help notify consumers of their opt-out rights.

While these steps will help get the word out, we are concerned as a technical matter, that the opt-out procedures established by new section 604(f) apply, by their terms, only to direct marketing—activities under section 604(e)(2). They should also apply to credit pre-screening under section 604(d)(1)(iii).

Section 106 (Obsolete Information)

Section 605 of the FCRA currently requires credit bureaus to delete obsolescent negative information. This reflects the public policy view that the benefit of the deletion (giving the consumer a "fresh start") outweighs the benefit of retaining the old information (since its age minimizes its relevance anyway).

Unfortunately, the spirit of section 605 has been undermined by two problems. The first problem relates to section 605(a)(4) of current law, which requires bureaus to delete the following information under the following timetable: "Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years." Bureaus undermine the intent of this seven year obsolescence period by delaying the event that triggers the seven year time clock. For example, a creditor may not officially charge-off an account for years after it first becomes delinquent. For example, if a creditor waits 2-years from the date the account first becomes delinquent to charge it off, the seven year time period stretches into a 9-year period.

This problem is addressed in Section 104(c) of the bill. The second problem related to section 605(a)(2) of current law, which requires bureaus to delete the following information on the following schedule: "Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period." Because the governing statute of limitations can greatly exceed seven years, we recommend deleting all of the words that follow the words "seven years."

Section 106 (Reinvestigations)

The bill tightens the reinvestigation process under which bureaus are required to reinvestigate the accuracy of information disputed by the consumer. Since the bill does not, and reasonably should not, impose a 100 percent accuracy standard on credit bureaus, the reinvestigation process is one of the prime tools available to achieve the level of accuracy consumers need. Unfortunately, it has not worked well for consumers in the past. Consequently, the tightened reinvestigation procedures incorporated in the bill are key accuracy-related reforms.

Although current law requires bureaus to delete any disputed information that they learn to be inaccurate or unverifiable during the reinvestigation process, consumers frequently find that the same inaccuracy, deleted once, pops up again in the same bureau's files months later. Under the bill, however, information that is deleted because it is inaccurate or unverifiable cannot be reinserted in the file—except under one reasonable circumstance, it must be permanently deleted. As long as bureaus have an incentive to comply with this reform through toughened civil liability provisions for non-compliance, this reform will go a long way toward eliminating the frustrations and burdens consumers now face with the reinvestigation process.

We would recommend some technical corrections in connection with the one exception under which bureaus may reinsert information that was previously deleted during the reinvestigation process. This exception (page 30, beginning with line 16) permits the reinsertion if the person who furnished the deleted information later certifies that the information is complete and accurate. For example, although the bill requires the bureau to notify the consumer about the reinsertion, it allows the notice to be provided *after* the reinsertion. We would recommend that the notice be provided *before* the reinsertion occurs.

Additionally, the bill does not specify the content of the reinsertion notification. The consumer should get the same notification with a reinsertion that he gets when the initial reinvestigation is completed. For example, when a reinvestigation is completed, the notice required under the bill (page 31, beginning with line 23) includes a description of how the disputed information will appear in subsequent reports, the name and phone number of the person who verified its accuracy, and a statement of the consumer's rights. The consumer needs this information when the disputed information is reinserted, too.

We appreciate the opportunity to testify and look forward to working with you and your staff toward speedy enactment of credit bureau reform legislation.

STATEMENT OF ROBERT D. HUNTER
ON BEHALF OF AMERICAN BANKERS ASSOCIATION
AMERICAN FINANCIAL SERVICES ASSOCIATION
CONSUMER BANKERS ASSOCIATION
MASTERCARD INTERNATIONAL INCORPORATED
AND VISA U.S.A. INC.

Mr. Chairman, Members of the Banking, Housing, and Urban Affairs Committee ("Committee"), my name is Robert D. Hunter and I am Executive Vice President at The Chase Manhattan Bank, N.A. I am presenting this testimony on behalf of the American Bankers Association,¹ American Financial Services Association,²

¹ The American Bankers Association is the national trade association representing commercial banks of all sizes, types, and locations. The combined assets of our members represent approximately 95 percent of the industry total.

² The American Financial Services Association is the Nation's largest trade association representing non-bank providers of consumer financial services, including credit card issuers. Organized in 1916, AFSA represents 367 companies, operating 10,910 offices, engaged in the extension of \$190 billion of consumer credit throughout the United States. These companies range from independently-owned consumer finance offices to the Nation's largest financial services, retail and automobile companies.

Consumer Bankers Association,³ MasterCard International Incorporated,⁴ and VISA U.S.A. Inc.⁵ (the "Associations"). The Associations appreciate the opportunity to appear before the Committee to present our views concerning credit reporting and the amendments to the Fair Credit Reporting Act ("FCRA") included in the Consumer Reporting Reform Act of 1993 ("S. 783").

The Associations appreciate this Committee's attention to the FCRA and the need for more accuracy in credit files. This Congressional focus has encouraged significant changes in the way consumer information is collected, maintained, and reported. Nevertheless, the legislation currently being considered by this Committee, S. 783, contains several provisions which would adversely affect the existing operations of credit reporting systems. The members of the Associations depend on these systems to provide information vital to the process of making sound judgments concerning proposed credit transactions and for other purposes contemplated by the FCRA. In addition, Association members regularly provide information to consumer reporting agencies based on their experiences with consumers. Accordingly, this testimony focuses on issues which affect those who receive information from, and supply information to, consumer reporting agencies.

The Congressional deliberations on FCRA have been prompted by concerns expressed regarding the continued effectiveness of the FCRA, particularly in view of the many technological and other changes which have taken place since the FCRA was enacted. The principal concerns that have driven the Congressional debate focus on the accuracy of information in credit files and in the consumer reports that are produced from these credit files. Substantial concern also has been expressed regarding consumer access to the information in their files and the ability of consumers to readily understand information in these files and in consumer reports. Since Congress began focusing on this subject, significant State and Federal regulatory efforts have been undertaken to address these concerns. In particular, over the last year and a half, the consumer reporting industry, through the Nation's three major consumer reporting agencies, has entered into consent agreements with State Attorneys General and the Federal Trade Commission ("FTC") which mandate that each of the agencies adopt extensive changes to their procedures to address these and other concerns that have been raised. The Associations believe that the consent agreements address the principal issues identified by Congress in its deliberations on the FCRA, including the key issues S. 783 is intended to address. Accordingly, the Associations urge the Committee to first examine how these consent agreements, and the resulting operational and procedural changes, work in practice before further consideration is given to Federal legislation. By waiting until the industry has had an opportunity to fully implement the changes called for by the consent agreements, the Committee will be able to more precisely determine what refinements to the FCRA are required.

The Associations appreciate the efforts undertaken by the Members of the Committee to deal with difficult issues which have arisen with respect to the FCRA during the past several years. In particular, the sponsors of the bill are to be commended for the efforts they have undertaken in an attempt to develop compromise positions with respect to challenging issues. In this regard, any Federal legislation to amend the FCRA must be carefully crafted to appropriately balance between the interests of consumers, consumer reporting agencies, and creditors and other users of consumer reports. We believe, however, that such a delicate balance is much more likely to be achieved after the consent agreements have been fully implemented, and their impact has been adequately considered.

BRIEF SUMMARY OF TESTIMONY

The legislation before the Committee raises significant operational and other issues which would be costly for consumer reporting agencies, creditors, and consumers alike. For example, the provisions of S. 783 imposing liability on creditors that merely furnish information to consumer reporting agencies could reduce the availability of essential credit information as creditors attempt to avoid liability by re-

³The Consumer Bankers Association was founded in 1919 to provide a progressive voice for the retail banking industry. CBA represents approximately 800 federally insured banks and thrift institutions that hold more than 80 percent of all consumer deposits, and more than 70 percent of all consumer credit held by federally insured depository institutions.

⁴MasterCard International Incorporated is a membership organization comprised of financial institutions that are licensed to use the MasterCard service marks in connection with payment systems, including credit cards.

⁵VISA U.S.A. Inc. is a membership association comprised of financial institutions in the United States that are licensed to use the VISA service marks in connection with payment systems, including credit cards.

stricting the information they furnish to consumer reporting agencies. The reduced availability of credits information would increase the risks, and thus the costs, associated with extending credit. This could have an anti-competitive impact that would affect most significantly smaller creditors that are less able to absorb the increased costs. Moreover, the types and amounts of credit available to consumers could be restricted. These undesirable results are avoided under the existing FCRA, which nevertheless protects consumers by requiring that the entities that actually collect, maintain, and distribute credit information—namely, the consumer reporting agencies—establish procedures to ensure the accuracy of that information.

The problems created by imposing liability on creditors that furnish information to consumer reporting agencies would be compounded by the proposal to require creditors to reinvestigate consumer disputes within a statutorily mandated and rigidly short time period. Creditors currently investigate and, where necessary, provide to consumer reporting agencies the facts needed to correct erroneous information. In addition, the Truth-in-Lending Act already requires creditors to investigate consumer claims of inaccuracy concerning information reported on monthly statements. Thus, the existing Federal statutory framework already provides adequate protection in this area.

It also is unnecessary and unwise to impose statutorily a 30-day time limit for reinvestigating consumer disputes regarding information in credit files. Most consumer disputes currently are resolved within 30 days. Moreover, the commentary on the FCRA ("FCRA Commentary") adopted by the FTC already requires that most disputes be resolved within that time frame. The FTC recognizes, however, that some consumer disputes require more time to resolve. It is important to preserve the flexibility presently provided in the FCRA and the FCRA Commentary to use additional time to reinvestigate such disputes when necessary and appropriate.

The Associations believe that any Federal legislation amending the FCRA should confirm the permissibility of, and facilitate, prescreening. As the FTC and Federal banking agencies have recognized, prescreening does not unduly infringe on the privacy rights or other interests of consumers. Instead, prescreening benefits consumers and creditors alike by reducing the costs of marketing and using credit products, increasing the availability of credit, simplifying the process of applying for credit, and reducing the likelihood that consumers will receive solicitations for products for which they would not qualify. Although S. 783 would confirm the permissibility of prescreening, the existing language would cause operational difficulties for creditors engaging in prescreening by creating uncertainty regarding the circumstances under which a prescreened offer may be withdrawn, and by rigidly restricting the information that may be included in a prescreened list. In view of the significant benefits prescreening provides to consumers and creditors, such operational issues should be avoided.

If Congress determines to pursue FCRA legislation, it should clarify the permissibility of sharing information among affiliated companies. It is clear that divisions or departments of the same company may share information under the FCRA, but there is less certainty with respect to sharing among organizations, such as banking companies, that are required or choose to operate many of their activities through separate affiliated legal entities. Such organizations should not be disadvantaged because of legal or other considerations which require or make it prudent to operate through separate affiliated companies. Accordingly, any FCRA legislation should clarify that such organizations are permitted to share information among their affiliated companies, just as departments or divisions of the same company may share information. S. 783 provides helpful clarification on this issue.

S. 783, however, would unnecessarily restrict the purposes for which a consumer reporting agency may furnish a consumer report in connection with a non-credit or insurance transaction involving a consumer. In particular, the bill would create uncertainty regarding the ability of a bank or other user of consumer reports to obtain a consumer report to review an existing business relationship. The ability to do so in connection with loans and credit accounts is clear under the FCRA and should not be precluded with respect to other existing customer relationships.

The obsolete information provisions of the bill also include unwarranted amendments to the FCRA. In particular, the Associations believe that the exception to the obsolete information provisions of the FCRA for large dollar transactions should be preserved, not repealed, as provided under S. 783. Information which is older than the applicable obsolescence time framed under the current FCRA (ten years for bankruptcy information, seven years for other information) should continue to be available in connection with larger transactions which involve higher risk and can require more sophisticated underwriting analyses. Ultimately, creditors, and not the Federal Government, must select and apply the criteria necessary to qualify for particular loans. Moreover, the obsolete information provisions should not be applied

to reports made in connection with commercial transactions even where such reports include personal information. The FCRA is a consumer protection statute and applying it in a commercial context, as would be required under S. 783, simply is unjustified.

Moreover, S. 783 would dramatically expand the scope of the FCRA adverse action requirements and require additional, costly, and potentially confusing new adverse action disclosures. By adding an expansive definition of adverse action to the FCRA, the bill could require that adverse action notices be furnished to consumers in inappropriate contexts. In addition, the new disclosure requirements would undermine the intent behind the adverse action notice requirements already mandated by the Equal Credit Opportunity Act ("ECOA"). Congress, in enacting the ECOA, determined that consumers would be best served by receiving just the principal reasons for an adverse credit decision, including the particular information in a credit report which contributed to that adverse decision. Requiring creditors to provide consumers with extensive new disclosures, such as those required by S. 783, would substantially detract from the clarity and usefulness of the statement of principal reasons for adverse action currently required under the ECOA and, thus, would be inconsistent with the Congressional intent of the ECOA.

The restrictions on the use of consumer reports for employment purposes which would be established by S. 783 also would create significant operational difficulties. For example, under the bill, an employer that reviews the consumer report of each of several job applicants and determines to offer the position to only one of the applicants would be required to first provide each of the other applicants a copy of his or her consumer report, and an opportunity to respond to certain information in the report. This simply is not feasible in many instances, particularly where hundreds of current employees apply for a relatively small number of positions announced through the employer's job posting practices.

S. 783 also would authorize State enforcement officials to commence actions in Federal court for violations of the FCRA. The Associations fully understand and support the objective of maintaining an appropriate enforcement role for State officials. It is critical, however, that any provision granting expanded Federal authority be carefully crafted to ensure that State enforcement efforts are coordinated with the Federal agencies that enforce the FCRA, and to avoid inconsistent interpretations of the Federal law. Moreover, provisions granting expanded Federal enforcement authority to State officials should be included in the Federal FCRA only if the Federal law is established as the national uniform standard governing consumer reporting.

In sum, many of the provisions of S. 783 would create significant, and costly, operational problems. Many of these problems could be avoided by waiting until the recent State and Federal consent agreements entered into by the consumer reporting agencies have been fully implemented, and the impact of those consent agreements have been carefully considered, before proceeding with Federal legislation. If Congress, nevertheless, determines to enact amendments to the FCRA, the Associations strongly urge Congress to simultaneously establish the FCRA as the national uniform consumer protection statute governing consumer reporting. We believe, however, that any provision establishing national uniformity for the FCRA should preserve the appropriate enforcement role for State Attorneys General and other State officials.

THE IMPACT OF RECENT STATE AND FEDERAL REGULATORY INITIATIVES SHOULD BE EXAMINED FULLY BEFORE FCRA LEGISLATION IS CONSIDERED FURTHER

Over the past several years, significant concerns have been expressed about the effectiveness of the FCRA, particularly in view of the many technological and other changes which have taken place since the FCRA was enacted. These concerns, which have driven the Congressional debate on the FCRA, involve the accuracy of information in consumer reporting agency files and consumer reports, and consumer access to, and ability to readily understand, that information. More specifically, the principal concerns with respect to the FCRA have focused on: (1) improving the procedures used by consumer reporting agencies to ensure the accuracy of the information they store and furnish; (2) facilitating consumer access to their credit files to enable them to readily determine what is included in those files; (3) ensuring that information is furnished to consumers in a readily understandable format; (4) improving the procedures used to reinvestigate disputed information and ensuring that reinvestigations are completed promptly; (5) ensuring that information previously deleted from a consumer's file as inaccurate or incomplete is not improperly reinserted; and (6) improving disclosures made to consumers regarding their right

to obtain and correct information in credit files. These concerns, which have prompted the ongoing Congressional deliberations on the FCRA, largely have been addressed through State and Federal regulatory efforts and through a variety of measures voluntarily undertaken by the consumer reporting industry.

In the last year and a half, the consumer reporting industry, through the Nation's three major consumer reporting agencies, has entered into consent agreements (and similar arrangements) with State Attorneys General and the FTC which mandate that each of the agencies adopt extensive changes to their procedures to address the principal issues identified by Congress in its deliberations on the FCRA. For example, the consumer reporting agencies are required to adopt new procedures to ensure that information is accurate before it is stored and used, and to prevent information pertaining to one consumer from being reported as part of another consumer's credit history. The agencies also must respond rapidly to any requests from consumers to review their credit files. Specifically, under the consent agreements, the agencies must respond to such consumer requests within four business days after the request. The agencies also are required to adopt procedures to make it easier for consumers to access their files. These include establishing toll-free telephone numbers consumers may use to contact the agencies, improving access to consumer reports free of charge if adverse action was based on a report, and limiting the fees consumers may be charged for access to their files under other circumstances. In addition, the consent agreements specify that when a consumer requests the information in his or her credit files, the information must be disclosed in easily understandable language.

The consent agreements also address concerns raised regarding the procedures used to reinvestigate disputed information. In particular, the consent agreements provide that reinvestigations must be completed within 30 days, which is the same standard sought in S. 783, and, like S. 783, protect against the reinsertion of previously deleted inaccurate or incomplete information. Just as importantly, the agencies also have agreed to provide increased and improved disclosures informing consumers of key consumer rights under the FCRA, including the rights to examine and correct information.

In addition to the extensive new procedures adopted by the consumer reporting agencies pursuant to the consent agreements, the industry is working towards voluntarily implementing additional standards to further improve industry performance and protect consumers, such as through the implementation of a new automated dispute resolution system to aid in responding promptly to consumer requests to reinvestigate file information.

As a result of these significant recent developments, we believe that the principal issues which have fueled the debate on FCRA amendments have been addressed. The Associations urge the Committee to first examine how these consent agreements and other initiatives work in practice before further consideration is given to Federal legislation. In this regard, by waiting until the industry has an opportunity to fully implement the changes called for by the consent agreements, the Committee will be able to more precisely determine what refinements to the FCRA are required.

S. 783 RAISES SIGNIFICANT OPERATIONAL AND OTHER POTENTIALLY COSTLY ISSUES

The Associations appreciate the efforts undertaken by the Members of the Committee to deal with difficult issues which have arisen with respect to the FCRA during the past several years. In particular, the sponsors of the bill are to be commended for the efforts they have undertaken in an attempt to develop workable compromise positions with respect to challenging issues. Any Federal legislation to amend the FCRA must be carefully crafted to appropriately balance between the needs of consumers, consumer reporting agencies, and creditors and other users of consumer reports. We believe, however, that such a delicate balance is much more likely to be achieved after the consent agreements discussed above have been fully implemented, and their impact has been carefully considered. In this regard, many of the provisions of S. 783 would create significant operational and other problems which could be avoided through such careful consideration. The following is a brief discussion of some of the more significant issues raised by the bill.

Imposition of Obligations on Creditors That Provide Information to Consumer Reporting Agencies

S. 783 would impose new obligations, and potential liability on creditors and others that furnish information to consumer reporting agencies. For example, the bill would require creditors that regularly furnish their experience information to a

consumer reporting agency to notify the agency if the creditor determines that the information is incomplete or inaccurate, and to provide the agency with any corrections to the information, or any additional information, necessary to make it complete and accurate. In addition, the bill provides that where a consumer disputes with a creditor the accuracy or completeness of information furnished to a consumer reporting agency, the creditor may not continue to furnish that information to the agency unless the creditor takes steps necessary to indicate that the particular information, out of the thousands or millions of items of information reported, is subject to some type of dispute.

The Associations believe that it is both unwise and unnecessary to impose such statutory requirements on creditors under the FCRA. First, it is important to understand that creditors are not compensated for the information they provide to consumer reporting agencies. Creditors provide that information so that the information will be available to create the credit history needed by consumers to qualify for loans from other creditors and for additional beneficial purposes, such as insurance or employment. So it is the consumer and the consumer reporting agency, and not the creditor, in the first instance that benefit from the reporting of this information. As a result, the imposition of significant new requirements, and potential liability, on creditors for furnishing information to consumer reporting agencies can provide a strong economic disincentive to providing that information.

In addition, creditors already have sufficient motivation to ensure that information they provide to consumer reporting agencies is accurate and complete. In providing information to consumer reporting agencies, creditors normally report the status of each loan or account (including the outstanding balance and the payment status, whether positive or negative) as it appears that month in their own records. Because this same information is essential for the creditor's own collection activities and for its other internal purposes, such as the creditor's reports to its regulatory agency or to its auditors, creditors already must maintain accurate records. As a result, creditors already have sufficient incentive to correct any inaccuracies in the information furnished by creditors to consumer reporting agencies.

Similarly, creditors that provide information to consumer reporting agencies depend on those agencies to provide to them accurate credit information that can be used in deciding whether to extend credit in connection with future applications. Creditors, therefore, provide accurate information to consumer reporting agencies because they, in turn, expect to receive from such agencies information that is reliable and useful in controlling credit risk.

Just as importantly, procedures recently implemented by the consumer reporting agencies further ensure that inaccurate information is excluded from their files. More specifically, under the consent agreements discussed above, consumer reporting agencies must follow reasonable procedures to detect errors in information they receive. In addition, the agencies must adopt a standard format for use by those that furnish information to the agencies in order to avoid the confusion that can result when information on the same consumer is received from different sources using different formats.

Moreover, the FCRA already contains adequate safeguards to ensure that any inaccurate information included in a consumer's credit file can be corrected. In particular, the FCRA already requires that a consumer receive notice if adverse action is based, in whole or in part, on information contained in a consumer report. The FCRA also requires consumer reporting agencies to: (1) allow a consumer to obtain information regarding his or her credit file; (2) reinvestigate and correct inaccuracies alleged by the consumer; and (3) allow the consumer to include a dispute notice in his or her credit file to notify others subsequently receiving a consumer report on the consumer that information in the report may be inaccurate. These procedures have been strengthened as a result of the consent agreements entered into by the consumer reporting agencies.

This allocation of responsibilities under the FCRA, which essentially requires the consumer reporting agencies to ensure that their credit files are accurate, should be preserved. Consumer reporting agencies are, and always have been, in the best position to take on this responsibility because they, unlike creditors, actually possess, or have access to, all of the data relevant to a consumer's credit file. In addition, because a relatively small number of consumer reporting agencies service the vast majority of creditors, and because tens of thousands of creditors use these systems, it is incontrovertibly more cost effective to continue to require the consumer reporting agencies to ensure the accuracy of the consumer credit files they maintain.

The provisions of S. 783 would change significantly the allocation of responsibilities under the FCRA and could have a chilling effect on creditors that furnish information to consumer reporting agencies. Every month creditors provide tens of millions of items of information to consumer reporting agencies. If each item of infor-

mation provided by a creditor creates the potential for liability under the FCRA (e.g., State enforcement officials could recover, among other things, \$1,000 per violation under section 112 of the bill), many creditors, who as indicated above are not compensated for providing this information, may choose not to provide any information to consumer reporting agencies, or to reduce substantially the information they report to the agencies. This would adversely affect many consumers because they may not be able to build sufficient credit records on which creditors can rely when those consumers apply for credit. The problems created by the absence of such information would be particularly acute in connection with consumer applications for larger loans, such as those necessary for purchasing homes.

In addition, a reduction in the supply of credit information would increase the risks associated with extending credit because creditors would be required to make credit decisions based on less complete information than is currently available under the FCRA. The increased risk would be reflected in an increase in the costs consumers must pay for credit. This also would have an anti-competitive impact on creditors. Large creditors with a sizable customer base would be better able to absorb the cost of the increased risk than would smaller creditors with more limited customer bases. As a result, smaller creditors would find it difficult to price their products to compete with larger creditors.

A shortage of credit information also would decrease competition by making it difficult for creditors to serve consumers across the country through national credit programs. In this regard, without access to the credit information currently available from consumer reporting agencies, it simply is not possible for a creditor located in a single geographic area, to extend credit to consumers in all 50 States. Moreover, the types and amounts of credit available to consumers could be restricted.

Disputes Concerning Accuracy of Credit Information

The FCRA currently requires a consumer reporting agency to reinvestigate and, if necessary, correct information disputed by a consumer within a "reasonable time." S. 783 would establish a maximum 30-day time limit for completing reinvestigations of information disputed by a consumer.

The Associations believe that a statutory maximum 30-day reinvestigation period is unnecessary and that such a rule would be inflexible to differences in individual circumstances. The FCRA Commentary already provides that consumer reporting agencies should be able to reinvestigate most disputes within 30 days and, thus, already establishes this time period as the standard or target. However, the FCRA Commentary recognizes that a rigid time frame of 30 days is not workable and indicates that a "reasonable time" for a particular reinvestigation may be shorter or longer than 30 days depending on the circumstances of the dispute.

The purpose of the FCRA provisions requiring reinvestigation of disputed information is to ensure that information maintained by consumer reporting agencies on consumers is accurate. By requiring that reinvestigations of disputed information be completed within 30 days, the bill emphasizes speed in reinvestigating consumer disputes at the sacrifice of accuracy in resolving such disputes. Moreover, such a specific 30-day time limit is unreasonably short when compared to error resolution periods provided under other Federal consumer protection laws. For instance, the Truth-in-Lending Act normally permits creditors two full monthly billing cycles or 90 days to resolve billing errors on credit card accounts, and the Electronic Fund Transfer Act allows an error resolution period of up to 45 days for ATM transactions and up to 90 days for debit card transactions.

The creation of an inflexible, short time frame for resolving allegations of file inaccuracies under the FCRA is particularly troublesome in light of the recent difficulties experienced with credit repair clinics, a problem which the Committee also is considering in connection with S. 783. The primary purpose of many of these clinics is to overwhelm creditors and consumer reporting agencies with a multitude of burdensome investigation requests and to require agencies to delete negative credit experience information, whether inaccurate or not, because they cannot comply with FCRA verification requirements as a consequence of the sheer volume of investigation requests submitted by the clinics. Shortening, or establishing by statute, the time period to reinvestigate alleged inaccuracies will encourage such clinics to submit even more requests to inhibit further the ability of creditors and consumer reporting agencies to respond effectively to such abusive practices. Such a result would be detrimental to consumer reporting agencies, creditors, and consumers.

This problem would be greatly exacerbated by the fact that, under S. 783, the consumer may provide to the consumer reporting agency additional "relevant information" regarding the dispute *at any time during the 30-day reinvestigation process*, and the agency is required to review and consider that information during the

30-day time period. This would create severe operational difficulties for the agency involved in the reinvestigation process. In this regard, the 30-day reinvestigation time frame is not extended if a consumer submits additional relevant information regarding the dispute at any time during the 30-day period. As a result, a consumer (or a group of consumers through a credit repair clinic) could notify a consumer reporting agency of a dispute (or disputes), thereby commencing the 30-day time frame, and up to the last day of that time frame submit additional relevant information regarding the dispute (or disputes). As a practical matter, the consumer reporting agency simply would not have time to consider the relevant information prior to the termination of the 30-day period, and the agency would have no choice but to eliminate the disputed information from the consumer's file.

S. 783 also would impose new reinvestigation obligations on creditors that furnish information to consumer reporting agencies which subsequently is disputed by a consumer. More specifically, such creditors would be required to: (1) complete an investigation of the disputed information; (2) review all relevant information submitted by the consumer to the agency and passed on to the creditor; and (3) report the results of the investigation to the agency. Under the bill, this process must be completed within the "20-day period" after the agency (not the creditor) receives notice of the dispute from the consumer. This could leave a period *as short as 12 days* to receive, reinvestigate, and respond to a dispute regarding information submitted months or even years prior to the dispute.

The FCRA already requires a consumer reporting agency to reinvestigate information disputed by a consumer, and in particular to check with the creditor that originally supplied the information and inform the creditor of the nature of the consumer's dispute. In addition, current agreements between consumer reporting agencies and creditors typically provide that the creditors must reinvestigate and confirm information reported to the agencies by the creditors and subsequently disputed by a consumer. These procedures have been enhanced by the consent agreements entered into by the three major consumer reporting agencies. In particular, the consumer reporting agencies now are required to adopt even more extensive procedures for resolving consumer disputes, including providing the consumer with an updated version of his or her credit report after the reinvestigation has been completed. These procedures are in addition to the voluntary industry efforts to further improve industry performance and protect consumers, such as the efforts underway to implement a new automated dispute resolution system to aid in responding promptly to consumer requests to reinvestigate file information.

Moreover, as noted above, creditors rely on the information contained in the files of consumer reporting agencies and incur increased risk of credit losses when that information is inaccurate. Creditors also have strong incentives to respond to requests to reinvestigate disputed information in order to maintain good relationships with their customers. As a result, when a creditor is contacted by a consumer reporting agency and notified that information supplied by the creditor has been disputed by a consumer, the creditor already is obligated and independently motivated to take appropriate steps to investigate and, if necessary, correct that information.

Also, when a consumer notifies a creditor that information reflected on the consumer's monthly billing statement for an open-end credit account is incorrect, the Truth-in-Lending Act already requires the creditor to investigate the consumer's claim and, if necessary, correct the information. Additionally, until the consumer's claim is resolved, the creditor may not report to a consumer reporting agency or any other third party that the consumer's account is delinquent as a result of the consumer's refusal to pay a disputed portion of the outstanding balance on the credit account.

In addition to being unnecessary, it is quite likely that the reinvestigation provisions of the bill would result in a dramatic increase in costly litigation against creditors and others that furnish information to consumer reporting agencies. For example, under the bill, a consumer would be permitted to commence an action against a creditor for failure to "review relevant information" submitted by the consumer in connection with a dispute. Questions whether the creditor has conducted the adequate "review" required under S. 783, or whether information submitted by the consumer is "relevant" are questions of fact which typically can be resolved only through costly litigation. Consequently, the bill would subject creditors to substantial litigation exposure in return for furnishing experience information free of charge to consumer reporting agencies, and ultimately, to competing creditors.

Furthermore, the unreasonably short 20-day time period during which creditors must complete, and report the results of, their investigation of disputed information could easily result in technical violations of the FCRA. In this regard, because the bill would permit a consumer reporting agency to take up to "5 business days" to notify a creditor of a dispute regarding information furnished to the agency by the

creditor, creditors would have considerably less than 20 calendar days to investigate disputed information. As a result, creditors may find it difficult, if not impossible, to complete the required investigation in the time allotted.

In short, the reinvestigation obligations that would be imposed on creditors under S. 783, like the other obligations imposed under the bill on those that furnish information to consumer reporting agencies, would create significant new exposure for creditors. This may cause many creditors to choose to stop or reduce reporting of their experience information to consumer reporting agencies. As discussed above, a reduction in the availability of such information would have an adverse impact on creditors and consumers alike.

Prescreening Provisions

For two decades, prescreening has been used by creditors and others throughout the United States as a cost efficient way to help identify consumers who are qualified for, and interested in, various credit products and other financial services. Prescreening begins when a creditor selects the criteria necessary for a consumer to qualify for the contemplated credit product, which typically include such factors as the absence of late payments or bankruptcies and evidence of successful use of credit in the past. The creditor then provides the criteria to a consumer reporting agency and instructs the agency to compile a "prescreened list" of consumers who meet the criteria. The prescreened list can be prepared either from a list supplied by the creditor or created solely from the consumer reporting agency's files.

A prescreened list typically contains brief information identifying the consumers, but does not include the specific line item credit information normally found in a consumer report. Once the prescreened list has been prepared, the creditor may receive the list from the consumer reporting agency and offer products directly to the consumers on the list. In most instances, however, the creditor does not actually receive the list, but instead instructs the consumer reporting agency or a third party, such as a mailing service, to send an offer to the consumers on the list.

Almost 20 years ago, the FTC, after full consideration of the issues involved in prescreening, concluded that prescreening is permissible under the FCRA. The FTC found that prescreening "results in no significant harm to consumers and . . . is not inconsistent with the basic purposes of the [FCRA]." 16 C.F.R. §600.5 (1990). The FTC, in the FCRA Commentary has reconfirmed the permissibility of prescreening and reiterated that the FTC "continues to believe the privacy infringement is minimal in prescreening, compared to that which occurs when a creditor obtains a full consumer report on a credit applicant. The consumer's credit history is not reviewed by the creditor; rather, his or her name is simply included (or not) on the list provided to the creditor." 55 *Fed. Reg.* 18,804, 18,807, footnote 14 (1990). The Federal Financial Institutions Examination Council ("FFIEC"), which is composed of the principal Federal banking agencies, also recognized the permissibility of prescreening in its November 22, 1991 policy statement on that topic.

Unquestionably, the FTC and FFIEC are correct in concluding that prescreening does not unduly infringe on the privacy rights of consumers protected under the FCRA. As noted above, during a typical prescreening exercise, even if a creditor actually receives a list of consumers, that prescreened list does not contain a description of a consumer's credit history or the other specific credit information typically included in consumer reports. As a result, even in instances where the creditor receives such a list, the list cannot be used to obtain specific credit, financial, or other private information about consumers on the list.

Similarly, any such privacy concerns are nonexistent with respect to the more common prescreening practice where the creditor does not actually receive a prescreened list and the consumer reporting agency itself, or a third party which has no knowledge of the screening criteria, provides an offer of credit directly to consumers on the prescreened list. In either case, there is no disclosure of any private information about the consumers involved in the prescreening. More specifically, there is no disclosure to a third party if the consumer reporting agency mails the solicitations directly to consumers on behalf of the creditor, and the identities of the consumers on the list are meaningless to a third party mailing service because the service does not know the criteria used to develop the list. Furthermore, the creditor is not aware of the identity of any consumer on the list until a consumer elects to respond and request the credit offered. Under such programs, the consumer's privacy is fully protected because the identity of the consumer is not even revealed to the creditor unless and until the consumer decides to contact the creditor about the offer, just as is the case with any other request or application for credit.

In short, prescreening simply does not raise any privacy concerns that require protection under the FCRA. However, even if it is assumed that prescreening does involve some privacy concerns, such concerns are, at most minimal as has been rec-

ognized repeatedly by the FTC. Moreover, such concerns pale in comparison to the substantial benefits prescreening provides to consumers and creditors alike. Prescreening reduces the cost of marketing a credit product by enabling a creditor to narrowly focus some of its solicitation programs on consumers who are interested in and likely to qualify for the credit offered, rather than randomly soliciting consumers at large, many of whom may not meet the criteria needed to qualify for that particular credit product. Consumers who are solicited through prescreening benefit from these cost reductions through, among other things, reductions in the cost of credit.

In addition, because prescreening enables a creditor to identify and solicit consumers who may be interested in the product offered, prescreening actually may reduce the chance that a consumer will receive unwanted solicitations. Similarly, because prescreening allows a creditor to target consumers who are likely to qualify for the credit offered, prescreening reduces the chance that consumers will receive solicitations for products for which they simply do not qualify. This not only reduces unproductive mailings to consumers, but also reduces the likelihood that a consumer will generate needlessly an unfavorable credit record. Without prescreening, many consumers would submit applications for credit products for which they do not qualify. The resulting inquiry and credit denial could then become part of their credit history. Consumers solicited through prescreening also enjoy the convenience of obtaining credit products through an abbreviated process, rather than preparing a full application typically used in connection with other marketing methods.

Although prescreening is an efficient means of narrowing the focus of solicitation programs, creditors also continue to employ other credit marketing methods. For example, creditors that utilize prescreening continue to solicit consumers through media, print, and other means of advertisement. Prescreening supplements these more traditional marketing methods by providing a means to solicit consumers who currently otherwise may not apply for credit. As a result, prescreening is used by creditors to increase, not reduce, the availability of credit to consumers.

Prescreening also does not adversely affect the credit histories of consumers. Although consumer reporting agencies may make an entry in a consumer's file each time the consumer is the subject of prescreening, that entry ordinarily is disclosed only to the consumer in response to the consumer's request to review the information in his or her file. Such information generally is not provided to creditors who subsequently seek credit information on the consumer.

In view of the substantial benefits that prescreening provides to creditors and consumers alike, the Associations believe that if any legislative action is taken with respect to prescreening it should clarify the permissibility of, and facilitate the use of, prescreening. Although the prescreening provisions of S.783 apparently represent a good beginning towards accomplishing those objectives, the provisions could create significant operational difficulties for creditors that engage in prescreening.

In particular, the definition of "firm offer of credit" set forth in the bill would create uncertainty regarding the circumstances under which a creditor may withdraw a prescreened offer of credit. The definition provides that the creditor may review a consumer report and other information for each consumer responding to a prescreening offer to determine whether the consumer meets "the criteria used to select the consumer for the offer." As noted above, consumers are selected for the "offer" when they are included in the prescreened list prepared by the consumer reporting agency based on a review of information included in the agency's files. Thus, the criteria used to select the consumers for the "offer" are those criteria identified by the creditor for the credit product offered which can be checked against the information maintained in the consumer reporting agency's files. The information maintained by the consumer reporting agencies generally does not include important data, such as the consumer's income, or even whether the consumer is employed. As a result, it is unclear whether a creditor would be permitted under S.783 to review such information because it typically is not among the criteria used by the consumer reporting agency to compile the prescreened list and, thus, would not be among "the criteria used to select the consumer for the offer."

S.783 also would impose rigid restrictions on the information that may be included in a prescreened list. More specifically, the bill provides that a prescreened list may not include any information other than names and addresses and "information pertaining to a consumer that is not identified or identifiable with the consumer." These restrictions, which apparently are intended to address privacy concerns, are unnecessary. In this regard, the bill would ensure that consumers are notified of the existence of prescreening and are provided an opportunity to prevent any prescreening of their credit files. These notice and prescreening "opt out" provisions should be more than adequate to address any privacy concerns regarding

prescreening. As a result, restricting the information that may be included in a prescreened list is unnecessary.

Moreover, these restrictions would create operational difficulties for creditors engaging in prescreening. In particular, because the only identifying information that could be included in a prescreened list is the names and addresses of the consumers on the list, it would be difficult in many instances for creditors to determine that each consumer who responds to a prescreened offer was in fact the person included on the prescreened list. Without information such as date of birth, telephone number and other similar identifying information, it often is difficult or impossible to distinguish among consumers with the same, or similar, names. Thus, for example, creditors would not be able to distinguish between a response by the consumer who actually was prescreened, from a response by a family member or other person with a similar name and address who was not included on the prescreened list or even part of the prescreening process.

In addition to these issues, the prescreening provisions of S.783 also raise concerns which could have an even more direct adverse impact on consumers. For example, consumers may wish to avoid prescreening with respect to some creditors or products, but not others. However, the opt out provisions of the bill would not permit consumers to make such choices and would require consumers to decide between inclusion in prescreened lists for all creditors and products, and complete exclusion from all prescreened lists. On the other hand, even if a provision that would allow consumers to select certain prescreened lists were operationally feasible, such a provision would create significant costs and require substantial systems changes that would likely make it unfeasible from a cost perspective. In order to mitigate these concerns, it is important that a reasonable time limit be placed on a consumer's election to opt out, such as the two-year time limit that would be established under S.783.

Prescreening exclusion provisions also actually may have an anti-competitive impact. For example, creditors could begin providing existing customers with forms permitting them to reject all prescreening programs they otherwise might receive from competing creditors and affirmatively encouraging their customers to submit rejection forms. Such anti-competitive behavior would preclude creditors that rely on prescreening as an efficient means of identifying creditworthy consumers from sending information regarding competing products. It also would deny consumers convenient access to information needed to compare and select among various competing credit programs.

In short, although the opt out provision apparently is intended to benefit consumers, providing consumers with an express statutory right to avoid inclusion on prescreened lists could reduce or even eliminate the use of prescreening to the detriment of consumers and creditors alike. If prescreening is restricted or eliminated, consumers will lose convenient access to important credit information that facilitates comparison shopping among various credit programs. This result directly conflicts with Congressional policies. For example, the furtherance of such comparison shopping is an important purpose of the Fair Credit and Charge Card Disclosure Act of 1988 which was enacted during the 100th Congress.

Definition of Consumer Report

The definition of "consumer report" included in the FCRA, which would be amended by S.783, has created considerable uncertainty regarding the permissibility of sharing information among related entities. Generally, any communication of information bearing on a consumer's creditworthiness or other specified consumer characteristics may be covered by the definition of consumer report. The entity furnishing such a communication runs the risk of becoming a consumer reporting agency and being subject to all applicable requirements of the FCRA. On the one hand, it is clear that information shared among departments or divisions of the same legal entity is not covered by the definition of consumer report because the information is not communicated to a third party. On the other hand, it is less clear whether communications of information among separate affiliates of the same organization are covered. In this regard, separate but affiliated legal entities have been deemed to be third parties for purposes of the FCRA. As a result, organizations, such as bank holding companies, which are required by law to operate through separate legal entities in some contexts, such as interstate banking, are placed at a disadvantage when compared to organizations that are free to operate through departments or divisions of the same legal entity. Similarly, organizations that choose to operate through separate legal entities for sound business and legal reasons are also disadvantaged.

The Associations believe that this disparity should be addressed in any Federal legislation to amend the FCRA. Any such legislation should confirm the permissibil-

ity of sharing information among affiliated entities. S. 783 provides helpful clarification on this issue.

Business Purpose for Furnishing Consumer Reports

S. 783 would amend the permissible purposes section of the FCRA to provide that with respect to a "business transaction" involving a consumer (*i.e.*, a consumer transaction other than a credit or insurance transaction), a consumer reporting agency may furnish a consumer report on the consumer only if the transaction is initiated by the consumer or is a non-consumer-initiated "direct marketing transaction." This amendment inappropriately restricts the purposes for which a consumer reporting agency may furnish a consumer report in connection with business transactions. Under the amendment, it is unclear whether a business would be permitted to obtain a consumer report to review an existing business relationship or account it has with its customer. As a result, the amendment could effectively preclude businesses from conducting legitimate and necessary reviews of existing customer relationships based on a consumer report. For example, in connection with deposit accounts and other similar products, financial institutions often provide price concessions and other benefits to customers based on the customers' strong financial condition at the time the account is opened. This amendment could preclude such financial institutions from subsequently obtaining a consumer report to determine whether the customers continue to qualify for the benefits provided.

The Associations believe that such a restriction is entirely unwarranted. In this regard, once a consumer chooses to commence a business relationship with a financial institution, the institution should be permitted to utilize consumer reports to conduct periodic reviews of that existing customer relationship. The ability to do so in connection with loans and credit accounts is clear under the FCRA, and should not be precluded with respect to other account relationships.

Obsolete Information

The FCRA provides that a consumer reporting agency may not include information in a consumer report which is older than seven years, or older than ten years for bankruptcy information. The law provides an exception, however, for large dollar transactions. Specifically, the FCRA permits a consumer reporting agency to furnish information older than the obsolescence time periods in connection with a credit or insurance transaction involving \$50,000 or more, or an employment decision involving an annual salary of \$20,000 or more. S. 783 would eliminate this exception for large dollar transactions.

The Associations believe that the obsolete information provisions currently in the FCRA strike an appropriate balance between the interests of consumers in eliminating from consumer reports older information, and the interests of creditors and other users of consumer reports in obtaining access to sufficient relevant information to enable them to make sound credit and other business decisions in connection with large dollar transactions. In this regard, it establishes reasonable time limits on the reporting of information for most consumer transactions while preserving the ability of creditors to obtain older information in connection with large dollar transactions. This balance should not be disturbed. The underwriting standards for creditors vary greatly depending on the size and marketing strategy of the creditor, and the nature of the particular loan or credit account. The FCRA should not be amended to establish restrictive statutory rules governing the manner in which creditors might otherwise choose to evaluate accurate and nondiscriminatory information by restricting the availability of such information from consumer reporting agencies, particularly in connection with large transactions.

Because such transactions involve greater risk exposure than smaller transactions and require different underwriting standards and more extensive underwriting reviews, it is important that flexibility be preserved to continue to permit creditors to review nondiscriminatory information, including older information, that the creditor deems necessary to control credit risk. Ultimately creditors, and not the Federal Government, must select and apply the criteria necessary to qualify for particular loans and credit accounts.

The bill would further amend the obsolete information requirements of the FCRA by providing that any "person" who prepares any "credit report" that includes personal credit information on any individual may not include in the report any adverse information on the individual which is more than ten years old or which could not be included in a "consumer report" pursuant to the obsolescence time frames discussed above.

This amendment represents a significant expansion of the scope of the FCRA which will lead to confusion, and application of the FCRA to inappropriate contexts. For example, by providing that the obsolete information provisions apply to any

"credit report"—a term which is not defined in the FCRA—the amendment would only increase the confusion concerning the scope of the FCRA which has been created by the difficulty in interpreting the circular definitions of "consumer report" and "consumer reporting agency." This confusion would be further compounded by the fact that the amendment would apply to a credit report prepared by any "person" rather than limiting its application to reports prepared by a "consumer reporting agency." In this regard, the term "person" is defined extremely broadly as "any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity." In view of this broad definition, this amendment will create enormous potential for inadvertent violations of the FCRA by individuals and other entities which were never intended to be covered, and clearly should not be covered, by the FCRA.

Moreover, although the language of the amendment is unclear, it apparently is intended to establish obsolescence time periods for reports furnished in connection with commercial transactions if those reports include information regarding an individual. In essence, the amendment seems to be intended to apply the obsolete information protections afforded consumers under the FCRA to individuals involved in commercial transactions. Expanding a consumer protection statute such as the FCRA to cover commercial transactions simply is unjustified. In addition, placing restrictions on the reporting of information in connection with commercial transactions would create unwarranted risks for creditors and others that deal with individuals in connection with such transactions. For example, under this proposed amendment, an individual operating a business could liquidate the business in bankruptcy resulting in substantial losses to creditors, and subsequently have the information regarding the bankruptcy eliminated from his or her credit history for commercial purposes. Although we understand the need to establish reasonable obsolescence time periods for consumer transactions below a reasonable dollar amount, it is entirely inappropriate and unwise to utilize the FCRA to restrict the reporting of relevant information involving individuals engaged in commercial transactions because of the amounts typically involved in, and nature of, commercial transactions.

Additional Adverse Action Requirements

S.783 would impose new adverse action requirements on creditors that use consumer reports. Currently, the FCRA requires a creditor that denies, or increases the charge for, credit "in whole or in part" on the basis of information contained in a consumer report to notify the consumer that the action taken was based on a consumer report, and provide the consumer with the name and address of the consumer reporting agency supplying the report. S.783 would dramatically expand the coverage of these provisions and add to the notice requirement unnecessary and potentially confusing new disclosures.

The bill would expand the scope of the adverse action requirements by defining the term "adverse action," when based "in whole or in part" on a consumer report, to include "any action which is adverse or less favorable to the interest of the consumer who is the report subject." Under this definition, creditors and others that use consumer reports could be required to furnish adverse action notices to many consumers in inappropriate contexts. For example, in order to control credit risk, many card issuers conduct regular reviews (e.g., annual reviews) of their credit card portfolios, and as part of that process obtain a consumer report on some or all of their cardholders. In connection with such reviews, it is not uncommon for a card issuer to identify cardholders whose creditworthiness has improved since the card was first issued, or since the last review, and to determine to offer those cardholders a credit line increase or a premium product such as a gold card. Under the definition of adverse action included in the bill, a card issuer could be required to furnish an adverse action notice to those other cardholders who are not offered a credit line increase or premium product, because the determination to make such an offer to some cardholders but not others would be based "in whole or in part" on a consumer report and would be "adverse or less favorable to the interest" of the consumers who do not receive the offer. Under such a definition, creditors could be required to furnish adverse action notices to millions of customers who have not even applied for, or requested, anything. As a result, the costs incurred in connection with conducting periodic reviews would be increased significantly unless issuers stopped offering additional benefits to customers as a byproduct of those reviews. Moreover, furnishing adverse action notices to existing consumers who have not requested, or applied for, anything, would create confusion and increase costs by generating substantial numbers of customer inquiries.

The difficulties that would be created by the definition in S.783, simply are unnecessary. The ECOA already includes a well established definition of "adverse action" which appropriately addresses those adverse credit decisions for which con-

sumers should receive an adverse action notice. If a definition of adverse action is included in the FCRA, there is no need to incorporate any definition with respect to credit determinations other than the definition set forth in the ECOA.

The bill also would require users of consumer reports to furnish additional disclosures to consumers in connection with adverse action based on a consumer report. Specifically, the bill would require that creditors and other users of consumer reports provide to consumers a written adverse action notice which includes the name, address, and telephone number of the consumer reporting agency that furnished the report, and a statement that the agency did not make the decision to take the adverse action. In addition, the notice must inform the consumer of the right to obtain a free consumer report from the agency that furnished the report used in connection with the adverse action, and from any other agency which compiles and maintains files on a nationwide basis. The notice also must disclose the consumer's right to dispute the accuracy or completeness of any information in the consumer report. Additionally, if the adverse action was based in whole or in part on a credit score or other credit rating system, the creditor would be required to provide to the consumer notice that the credit scoring system was used and the principal reasons for the credit score if those reasons are required to be disclosed under the adverse action requirements of the ECOA.

These proposed changes would impose significant additional costs on creditors and are unnecessary. The ECOA already provides that a consumer who has been denied credit must be furnished with a statement of the principal reasons for the credit denial. In addition, the FCRA already provides applicants with adequate information regarding the role of a consumer report in the adverse action and the opportunity to obtain further information. Currently, the FCRA adverse action provisions require a creditor to disclose to the consumer the name and address of the consumer reporting agency that provided the report, so that rejected applicants may easily contact the agency with any questions about their reports. In addition, the FCRA already requires the consumer reporting agency to provide to the consumer upon request information contained in the consumer's credit file, and to explain that information to the consumer. That information must be provided to the consumer free of charge if the consumer requests it within 30 days after receiving an adverse action notice. Under the consent agreements described above, the consumer request can be made within 60 days after receiving that notice.

As a result, a consumer who has been denied credit based on information contained in a credit report currently receives a statement of the principal reasons for the credit denial and has the right, if he or she chooses to exercise it, to examine fully, without charge, the information that provided the basis for the credit report and denial of credit. Providing information beyond that already required would only serve to detract from the important information currently provided. In this regard, the ECOA adverse action notice requirements are based on the premise that a consumer who has been denied credit should be provided with a statement of only the principal reasons for that action. By focusing the applicant's attention on these key reasons, the applicant is more likely to identify inaccuracies in the information relied on by the creditor and improve the aspects of their credit record that caused the credit denial. Requiring extraneous information in the FCRA adverse action notice, which typically is provided at the same time as the ECOA notice, is likely to distract the consumer from the most important information and, thus, frustrate the purposes of the ECOA.

Use of Consumer Reports for Employment Purposes

S. 783 would establish new restrictions on the use of consumer reports for employment purposes. These provisions would create significant operational difficulties which could make it unworkable to utilize consumer reports in connection with certain employment determinations. For example, the bill provides that before taking adverse action based on a consumer report in connection with an employment determination, the employer must provide to the consumer to whom the report relates a copy of the report, a description of the consumer's rights under the FCRA (as prescribed by the FTC), and a reasonable opportunity to respond to any information in the report that is disputed by the consumer.

In many instances, it simply is not practical for a user of consumer reports to provide every job applicant who is not hired an opportunity to respond to information in his or her consumer report. For example, literally hundreds of applicants may be interviewed for administrative positions at financial institutions for a limited number of job openings. A consumer report may be obtained with respect to many of these applicants, and it simply is not practical to provide hundreds of applicants an opportunity to respond to information in the reports before offering a position to someone else.

State Enforcement of the FCRA

S. 783 would expressly permit the chief law enforcement officer of any State to bring an action in Federal district court for violations of the FCRA. The bill would permit such enforcement officers to seek injunctive relief, recover amounts for which the defendant is liable under the FCRA to each person on whose behalf the action is brought, seek any remedies permitted under the law of the State, and collect a civil penalty of up to \$1,000 for each violation.

In view of the many accomplishments of the State Attorneys General in addressing concerns regarding consumer reporting, it would appear that they already have adequate enforcement powers under existing law. However, the Associations appreciate the desire to preserve, or even expand, the appropriate role for State Attorneys General in enforcing the FCRA. Any provision granting authority to State Attorneys General to enforce the FCRA, however, should be carefully crafted to prevent duplicative and inefficient enforcement efforts, and to avoid inconsistent interpretations of the Federal law. In this regard, State Attorneys General should be required to provide notice to those Federal agencies primarily responsible for enforcing the FCRA before bringing any action under the FCRA in Federal court. The absence of such provisions requiring coordination of enforcement actions will result in State and Federal agencies duplicating their efforts. Considerable care should be taken to avoid such inefficiencies in view of the many other critical enforcement responsibilities State Attorneys General and Federal agencies must perform with limited resources.

The provision authorizing State Attorneys General to bring actions under the FCRA also would create significant potential for inconsistent interpretation of the FCRA. In this regard, because the bill does not grant to the Federal district courts exclusive jurisdiction with respect to actions brought under the Federal FCRA, State Attorneys General would be permitted to bring suit either in State or Federal court. In view of the significant number, and diversity, of State courts throughout the Nation, this would create considerable potential for inconsistent interpretations of the FCRA. In any event, provisions authorizing State officials to enforce the FCRA should be included only if the FCRA is established as the national uniform standard governing consumer reporting.

THE FCRA SHOULD BE ESTABLISHED AS THE NATIONAL UNIFORM STANDARD

The Associations urge the Committee to keep in mind the many inconsistencies the proposed amendments to the FCRA would create with respect to State fair credit reporting statutes. Such significant inconsistencies would have a dramatic adverse impact on the operations of consumer reporting agencies and creditors throughout the country. Such organizations operate on a multistate basis in what, since the enactment of the FCRA, has developed into a nationwide credit market supplied by many regional and national providers. Many States have enacted legislation based on the current FCRA provisions. Some of these States are considering amendments to their statutes and others may be considering enacting new legislation. As a result, it is becoming more difficult for consumer reporting agencies and users of consumer reports to conduct their activities in a manner which complies with these State statutes as well as the FCRA. For example, inconsistent State law requirements can make it difficult, if not impossible, for consumer reporting agencies to complete required reinvestigations within short, rigid statutory time frames. Moreover, inconsistent State and Federal disclosure requirements regarding the same matter create significant difficulties. When multiple disclosures are included on the same document, they often create consumer confusion and detract from other important consumer information. In addition, in some instances, it simply may not be possible to combine such disclosures on a single document in which case creditors must utilize separate documents for each State in which they operate. At a minimum, such difficulties result in increased costs which ultimately increase the cost of credit to consumers. These are precisely the types of problems Congress successfully avoided when it established the Fair Credit and Charge Card Disclosure Act of 1988 as the national uniform standard governing credit and charge card application disclosures.

The problems already experienced as a result of existing inconsistencies will be compounded if Congress determines to enact the amendments to the FCRA currently being considered by the Committee. The enactment of such amendments would create a Federal statute which is substantially inconsistent with the corresponding provisions at the State level. Accordingly, it is critical that if Congress decides to enact amendments to the FCRA, Congress should simultaneously take

the opportunity to establish the FCRA as the single national consumer protection statute governing consumer reporting agencies and the users of consumer reports.

The Associations also urge the Committee to keep in mind that the proposed amendments to the FCRA would impose significant new obligations on creditors and consumer reporting agencies in an effort to address consumer concerns. Such extensive new obligations must be accompanied by provisions establishing the FCRA as the national uniform standard if the critical balance between the interests of consumers, consumer reporting agencies, and creditors is to be maintained.

The Associations recognize, however, the need to preserve the appropriate enforcement role for State Attorneys General and other State officials if the FCRA is established as the national uniform standard. Accordingly, any provision included in the FCRA which supersedes corresponding State laws should clarify that it does not prevent States from employing or enacting State laws to enforce the Federal FCRA.

CONCLUSION

The issues which have been the primary focus of the Congressional debate on the FCRA have been addressed through State and Federal regulatory efforts and voluntary industry initiatives. These efforts and initiatives should be considered carefully in order to avoid adopting unnecessary amendments to the FCRA which would be costly to consumer reporting agencies, users of consumer reports, and ultimately consumers.

Once again, the Associations greatly appreciate the opportunity to present our views regarding these important issues.

TESTIMONY OF EDMUND MIERZWINSKI

CONSUMER PROGRAM DIRECTOR, U.S. PUBLIC INTEREST RESEARCH GROUP
ON BEHALF OF

U.S. PUBLIC INTEREST RESEARCH GROUP, BANKCARD HOLDERS OF AMERICA,
CONSUMER FEDERATION OF AMERICA, CONSUMERS UNION,
PUBLIC CITIZEN'S CONGRESS WATCH, AND U.S. PRIVACY COUNCIL

Mr. Chairman and Members of the committee: My name is Edmund Mierzewski and I am testifying on behalf of the U.S. Public Interest Research Group¹—the national lobbying office for State PIRGs. PIRGs are consumer and environmental advocacy groups with over one million members in 33 States. My testimony is also on behalf of Bankcard Holders of America,² Consumer Federation of America,³ Consumers Union,⁴ and Public Citizen's Congress Watch,⁵ and U.S. Privacy Council.⁶

I want to commend you, as Chairman of the Committee, for elevating this matter to the full committee's purview and for joining Senators Bryan and Bond as original co-sponsors of S. 783. Senators Bryan and Bond deserve credit for their longtime support for remedial credit bureau legislation.

I am pleased that the committee is holding this hearing on the urgent matter of credit bureau reform. In particular, I believe this is the first Senate legislative hearing on a proposed bill—S. 783—since the Congress, consumer groups, State legisla-

¹U.S. PIRG is the national lobbying office for State PIRGs. PIRGs are consumer and environmental advocacy groups with over one million members in 33 States.

²Bankcard Holders of America is a national, non-profit consumer organization focused exclusively on credit education and advocacy. BHA is supported by 75,000 consumer members nationwide.

³The Consumer Federation of America (CFA) is the Nation's Largest consumer advocacy organization, encompassing more than 240 national, State, and local consumer, senior-citizen, low income, union, farm, labor, public power and cooperative groups representing over 50 million people.

⁴Consumers Union is a non-profit organization, chartered in 1936 under the laws of New York to provide information, education and counsel about consumer goods and services and the management of family income. Consumers Union's income is derived solely from the sale of *Consumer Reports*, its other publications and films. Expenses of occasional public service efforts may be met in part by non-restrictive noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports*, with approximately 4.9 million paid circulation, regularly carries articles on health, product safety, marketplace economics and legislative, regulatory and judicial actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

⁵Congress Watch is the lobbying arm of Public Citizen, a non-profit citizen research, lobbying and litigation organization founded in 1971 by Ralph Nader.

⁶The U.S. Privacy Council is a voluntary coalition of privacy experts seeking necessary reforms to U.S. privacy laws.

tures and State Attorneys General began intensive oversight of the credit bureaus in 1989.

I hope that before the end of 1993 we can pass a bill reforming the Federal Fair Credit Reporting Act. The FCRA is an archaic, weak, ineffective, narrow, unenforced and unenforceable law. It is not yesterday's model, or last year's model. It is prehistoric. That is not the fault of its makers, including your distinguished predecessor, Chairman Proxmire, but the fault of rapid, unpredicted technological change that has allowed the industry to consolidate its databases on a national basis and sell its products instantaneously and electronically. Unfortunately, while the changes in the industry have resulted in vastly increased use of credit reports, they have not been accompanied by concomitant increases in consumer protection. Mistakes in reports and privacy invasions are rampant.

I hope that, working together, we can overcome the obstinacy and recalcitrance of industry groups—and I particularly mean the banks, finance companies, department stores and other creditors—that has prevented final action on this critical proposal for the past few years.

We believe that S. 783 offers a good beginning to develop final legislation to clean up the credit bureaus. We believe, however, that the bill should be amended so that it can better achieve its intent, and we offer in this testimony a number of suggestions for improving the bill. In particular, however, we want to thank you and Senators Bryan and Bond for taking the preemption of States' rights—an onerous and distasteful proposal—off the table. The bill makes numerous other positive steps as well, such as limiting the time of reinvestigations of errors, requiring that consumers be told their rights by all report users, and by providing for 800 telephone numbers to contact the bureaus. In addition, the bill strengthens consumer rights in reinvestigation, requires the deletion of false information from reports and sets high standards to prevent its reinsertion.

URGENT NEED FOR LEGISLATION CONTINUES

I am aware of the industry's stance that it is not the same industry as it was even five years ago. I would respectfully point out that their recent changes are neither technology-driven nor market-driven. Rather, they result from intense public scrutiny. As Justice Brandeis stated: "Sunlight is the best disinfectant."

That scrutiny has so far included the passage of three new State laws in California, Vermont, and Maryland (as General Curran has testified today), consent decrees with the Big Three credit bureaus by State Attorneys General and the FTC, and Congressional consideration of tough remedial legislation.

We must not presume that because one credit bureau is providing free credit reports, or because two are producing their reports in a language somewhat resembling English, or because a few States have acted, or because the consent decrees are in force, that the need for tough Federal legislation is diminished. In fact, we must ensure that the legislation we pass this year is as broad as possible and encompasses as many potential problems as we can foresee. It's been twenty-two years since the act became law and we may not get another chance for twenty-two more.

I would further point out that, in my professional experience, credit bureau complaints are not declining in number or severity.

A number of oversight hearings and reports have adequately summarized the credit reporting problem, so I will not dwell on it in great detail. After a brief summary of problems, I will make our suggestions for improving S. 783:

SUMMARY OF CREDIT REPORTING PROBLEMS

Use of Credit Reports Ubiquitous In Society

Errors in consumer credit reports cause banks, employers, landlords and others to unfairly deny consumers credit, insurance, employment, or even a place to live or the right to cash a check at a store or open a bank account. Nearly every credit-active adult American has a computer file at each of the Big Three credit bureaus. Credit report use is now ubiquitous in business and commerce, even though consumers have few rights, not even the rights to authorize the use of their reports or look at their reports for free, except in limited circumstances.

Mistakes Occur In Up To 33 Percent of All Reports: Some Caused By Creditors, Others By Credit Bureaus

Mistakes may occur in up to 33 percent of all reports. If you were to review past testimony of the credit bureaus, you would find that (although they don't like to attack their creditor customers) the bureaus often claimed that their role was to "report" information and that someone else (the creditor customer) was responsible for

its accuracy. Although we are gravely concerned about credit reporting errors caused by banks and other creditors, credit bureaus cause mistakes as well. For example, in 1991, TRW wrongly characterized thousands of taxpayers in Norwich, VT as deadbeats. Equifax did the same to homeowners in Middlesex County, MA. These public record entries on credit reports are serious black marks against your report. Further, faulty credit bureau systems often cause the recurrence of corrected errors, further frustrating consumers. And, even if you do know about a mistake in your report, it could take a long time to fix it.

A 1991 U.S. PIRG report, *Don't Call; Don't Write; We Don't Care*, documented that consumers who complained to the FTC had already complained to the credit bureau an average of 23 weeks or more without satisfaction. Further, 63 percent of those consumers had already contacted the credit bureau five times or more before writing the FTC.⁷

Consumer Privacy Is Invaded By Report Misuse

Credit bureaus routinely sell our credit reports—to just about anyone—without our permission, invading our privacy. In a recent study by the City of New York,⁸ 35 percent of credit bureaus were willing to fax credit reports to an investigator who said she was a “landlord.” Only the State of Vermont requires a business to have the consumer’s permission to access a credit report. In other States, look out. And, many credit bureaus illegally enhance junk marketing computer lists with information from our credit reports. The FTC is suing Trans Union, which in defiance of the law, routinely sells credit information to junk marketers.

Consumers Aren’t Told Their Rights By Creditors

The law does not require banks, department stores or credit bureaus to tell consumers their rights—such as the right to a free credit report following denial and the right to reinvestigation of any disputed information—upon either denial of credit or an error dispute. Since 1989, we have asked creditors to voluntarily tell consumers their FCRA rights. To our knowledge, few, if any, do.

Credit Reports Should Be Free, But Are Not

Credit bureaus formerly routinely charged consumers up to \$25 each (\$50 for a couple) just to *look at their credit reports*. Recently, State Attorney General lawsuits have knocked that down to \$8 per report. That’s still outrageous, simply to look at a credit report that’s probably wrong and to then *try* to get it fixed. If consumers don’t look at their credit reports, the errors will not be fixed.

Creditors Are Exempt From The Law

Current law exempts banks, department stores, finance companies and other creditors from any responsibility to either ensure accuracy of reports or protect consumer privacy. The creditors, of course, have no liability either.

Creditors Don’t Need A Consumer’s Permission To Access Reports

The law allows any business with a “permissible purpose” to access credit reports without a consumer’s permission. And if they don’t have a permissible purpose, they can probably use the so-called “legitimate business need” permissible purpose loophole, provided the anticipated transaction “involves the consumer,” whatever that means. Most creditors do ask a consumer’s permission. Many other legitimate, and illegitimate, users do not. Consumers should provide informed consent before their reports can be accessed, as Vermont law already requires.

Consumers Cannot Easily Sue Bureaus

While credit bureaus, unlike creditors, have duties and liability under the act, consumers still face difficulty suing them. The standards of proof in the FCRA are difficult at best. Further, the law provides only for actual damages, with no minimal statutory penalties for violations.

RECOMMENDATIONS TO IMPROVE S. 783

• Provide For Free Credit Reports

H.R. 1015 provides for a free report annually on request, caps the price of any report not free under these or related reinvestigation circumstances to \$8 and pro-

⁷Several studies, including one by Consumers Union, have substantiated an error rate on credit reports of between 20 and 50 percent. In 1989, the Associated Credit Bureaus testified that nearly three million of the nine million credit reports requested each year are updated or corrected. That means up to 33 percent of all credit reports could contain serious errors.

⁸Prying Eyes, November 1991, New York City Department of Consumer Affairs.

vides a refund if an error is found on a report that was paid for. **The Committee should incorporate these provisions into S.783.**

- **Establish A Private Right Of Action For Furnisher (Creditor) Violations**

The bill does not give consumers a private right of action against banks, department stores and other creditors that violate any of the basic requirements of the act. It immunizes banks and other creditors from virtually all lawsuits by consumers injured by a creditor's violation of the act. Only the Government can enforce the law. The bill protects furnishers of information against most private actions by injured consumers by restricting furnisher liability only to circumstances where reinvestigation duties are violated. A consumer would have no FCRA cause of action, for example, against a creditor that repeatedly inserted false information in his or her report.⁹

We recommend S.783 be amended to provide consumers with a private right of action against furnishers who violate the law.

- **Strengthen Provisions On Employment Uses of Reports**

Current law allows employers to look at consumer credit reports for nearly any hiring or promotion decision. S. 783 would give applicants and employees additional protection, particularly before their reports were used for adverse actions. But the bill allows weak upfront disclosures. It, for example, allows a notice in an employee personnel manual to suffice for notice to employees. The bill would allow either a "general or specific" authorization by employees or applicants, before the employer can access a report. If credit reports are to continue to be allowed to be used for employment purposes,¹⁰ then applicants and employees should receive greater rights. **For example, we recommend that applicants and employees provide informed consent before their reports are accessed, as H.R. 1015 provides.**

- **Eliminate Provision Establishing A Corporate Affiliate Exemption From Definition of Credit Report**

The bill would establish a broad corporate affiliate exception from the definition of a credit report (and therefore the requirement that reports be used solely for permissible purposes). The proposal would allow affiliates of a holding company structure to share information derived from credit reports without being subject to the FCRA. We do not believe such an exception has merit. At a time when consumers are subject to numerous privacy invasions, on every side, we see no reason to exempt some credit reports from the law, simply because they are transferred to affiliates!

In addition, we believe that this section creates a potential loophole that could allow corporations to set up affiliates for the express purpose of developing databases based on credit reports to use for any purpose they wanted, without being subjected to the act.

The sections related to affiliate transactions should be deleted from the bill.

- **Eliminate Provision Allowing Junk Marketing From Credit Reports**

Both S.783 and H.R. 1015 codify the FTC's longstanding sleight-of-hand that the use of credit reports for credit marketing is a permissible purpose (provided the transaction results in a "firm offer of credit").¹¹ S.783 would expand pre-screening to insurance purposes, as well as credit purposes. Both bills would narrow the FTC's current stance that pre-screened credit reports must result in a "firm offer of credit." The bills would do this by allowing creditors to "post-screen," or look at the full credit reports, of consumers who responded to a pre-screened offer, and withdrawing

⁹ An apparent drafting error in S.783 has civil liability either limited to 622(a)(1) ("know or should know" standard) or to all duties under 622(a) (all except duty to notify consumers info is shared with bureaus and duty to comply with reinvestigation are exempt).

¹⁰ Many privacy advocates believe the case for allowing credit reports to be used for most employment purposes is weak, at best, although neither bill would prohibit the practice.

¹¹ We use the term "sleight-of-hand" because legal experts are divided on the legality of pre-screening. In 1990, for example, the Congressional Research Service sent Chairman Richard Lehman of the House Consumer Affairs Subcommittee a legal memorandum arguing that pre-screening is not allowed by the act. Pre-screening is the coding of credit reports by income and demographic data to create mailing lists for solicitations. A creditor asks the bureau for a mailing list of consumers who pass the "screen's" criteria, such as available credit, good credit, and location, then mails offers to the consumers. Under the FTC's current interpretation, for the solicitation to be a firm offer of credit, not a credit application, then every person who responds must receive a credit card, except in exceedingly narrow circumstances. The bills, H.R. 1015 and S. 783, would allow a much broader post-screen review.

the "firm offer of credit" if the consumer no longer meets the criteria established for the offer.

Mr. Chairman, it is important to note that, in the interests of a balanced bill, the consumer-privacy coalition does not oppose the codification of credit pre-screening (provided that the privacy protection and opt-out provisions in the bill are retained).

On the other hand, we strongly oppose the use of credit reports for target marketing. The bill would explicitly allow credit reports to be used for junk or target marketing.¹² As the FTC has testified, it is currently in litigation with Trans Union, which persists in marketing credit information despite the agency's stance that it is illegal. The section appears to be designed to create in statute the loophole sought by Trans Union: it would exempt information such as the presence of credit cards or any other accounts from the definition of credit report, by saying that if information on a consumer's payment history or delinquencies or limits is not reported, then the account information provided is not a credit report. While the bill would require users of these lists to notify consumers of the practice, such a notification of a right to opt-out of having your privacy grossly invaded does not cure the essential flaw in the concept: the definition of credit report should not be weakened to allow credit data to be used to develop magazine subscription lists.

We recommend that the sections of the bill allowing the use of credit reports for direct marketing be deleted.

- **Strengthen Accuracy Standards and Require Reasonable Procedures For Furnishers (Creditors) To Avoid Errors**

The Senate bill has a lower standard of care for furnishers than does H.R. 1015. A furnisher must not report information when the furnisher "knows or should know that the information is incomplete or inaccurate."

More critically, the Senate bill does not require that furnishers employ "reasonable procedures" to avoid errors.

We recommend that the House language be substituted.

- **Provide For Informed Consumer Consent Before Accessing Report**

The bill recognizes that a fair amount of illegal access to credit reports comes through reports sold by so-called resellers or superbureaus. However, placing duties and penalties on resellers is not enough. In our view, there are privacy gaps caused by the industry's structure that can only be rectified by consumer informed consent.

For example, the industry allows large end-users—such as car dealers, real estate agents, department stores and banks—to obtain credit reports electronically with a so-called blanket permissible purpose. Numerous cases of illegal access result from individuals with system access obtaining reports for their friends and political cronies. Additional duties on resellers will not solve this part of the problem.

Second, the industry also wholesales data to legitimate resellers that enhance credit bureau products. Some resellers, however, are unseemly data merchants who operate in the so-called information underground, stealing and selling IRS, Social Security, telephone company and credit bureau records.

We certainly do not disagree with the industry that penalties for illegal access should be increased. However, penalties against the Big Three should also be increased, particularly when their customer audit procedures are poor. But we also believe that a good way to help prevent illegal access, without attempting the impossible task of altering the industry's structure, is to bring consumers into the credit report access calculus. It should be a requirement that consumers authorize use of their reports.¹³

We recommend, as Vermont law provides, that consumers should provide informed consent before a report can be accessed.

- **Include An Investigative Consumer Report Section**

In 1991, it was reported widely in the media that Equifax was conducting subjective job interviews on behalf of Delta Airlines. Former Pan Am flight attendants being considered for jobs were being asked highly personal and invasive questions.

¹² Positively, the bill amends the act to codify the FTC view that a consumer must initiate a transaction before the transaction creates a "legitimate business need" to access a full credit report. Current law vaguely states only that a transaction must "involve the consumer." However, the bill also creates an exception to this general rule that makes direct or target marketing a permissible purpose under the act [to obtain lists of consumers derived from screened reports, not entire files] unless consumer opts-out.

¹³ In addition to the privacy invasion caused by illegal access to consumer credit reports, consumers may be denied legitimate credit requests because each "inquiry" on your credit report counts against you in credit scoring systems, the same way a late payment does. Too many inquiries, whether legal or illegal, is a negative factor.

Such subjective questioning, which also includes interviews with neighbors and other practices, is deserving of far greater scrutiny. Current law provides only modest protection for so-called investigative consumer reports. We recommend that the committee include the H.R. 1015 section on investigative reports in S. 783.

CONCLUSION

I want to express my appreciation for the privilege of testifying before you today. I cannot over-emphasize the fact that consumer and privacy groups, who have worked closely with State governments and the Congress on this problem, believe that this is a problem with a solution. S. 783, as proposed to be amended, would be a fair and balanced bill that would increase consumer protection and protect consumer privacy, without disrupting the credit reporting industry. Thank you.

STATEMENT OF RONALD PRILL

VICE PRESIDENT OF CREDIT, MERVYN'S

ON BEHALF OF THE NATIONAL RETAIL FEDERATION

Mr. Chairman, Members of the Committee, my name is Ronald Prill, Vice President of Credit, Mervyn's. I am pleased to appear today on behalf of the National Retail Federation, for which I am Chairman of the Federation's Credit Advisory Council, to discuss proposed legislation that is of great importance to retailing.

By way of background, the National Retail Federation is the Nation's largest trade group which speaks for the retail industry. The organization represents the entire spectrum of retailing, including the Nation's leading department, chain, discount, specialty and independent stores, several dozen national retail associations, and all 50 State retail associations. The Federation's membership represents an industry that encompasses over 1.3 million U.S. retail establishments, employs nearly 20 million people and registered sales in excess of \$1.9 trillion in 1992.

SUMMARY OF TESTIMONY

The retailing industry opposes the sweeping reform of the Fair Credit Reporting Act that is envisioned by this bill. The existing law is sound in its basic approach and in the manner in which it operates.

The FCRA properly regulates the businesses that collect credit history information voluntarily furnished to them and which they sell to businesses that have a need for it. The current balance between the consumer's rights and the creditor's needs must be maintained if we are to continue to conduct business in today's competitive environment.

Much has changed regarding the manner in which the consumer reporting industry operates since enactment of the FCRA in 1970. Many of the key provisions of S. 783 have already been accommodated by the consumer reporting industry voluntarily. Creditors and credit bureaus are continuously working together to improve the account history reporting function. Agreement has been reached to report account delinquency in a uniform manner and each credit reporting processing system has agreed to a "generic" version of the computer tape format as the preferred way for credit bureaus to receive accounts receivable tape information.

In addition to a number of voluntary changes brought about by the consumer reporting industry, recent regulatory requirements agreed to by the three national consumer reporting agencies with State Attorneys General and the Federal Trade Commission, make most of the amendments proposed by S. 783 unnecessary. The changes in industry practices that are now mandatory for all credit bureaus affiliated with the three national credit reporting agencies are listed in our Statement at pages 16-19.

Credit grantors have worked diligently to improve the accuracy of the information about customers' credit histories that is reported to credit bureaus by on-line data processing systems.

To assist the credit bureaus in meeting their legal obligations, merchants are improving their accounts receivable tape information systems and augmenting their billing tapes with additional information, all to maintain the best possible data base for reporting to credit bureaus. Credit grantors are redoubling their efforts to help credit bureaus match information to the proper credit bureau file. To assist the bureaus in resolving disputes, credit grantors are improving the response time for consumer disputes that are communicated to the credit grantor by the credit bureau. Timely and thorough responses are an important part of the industry's multi-

faceted commitment to improve accuracy and maintain the integrity of credit bureau files.

Many credit grantors have developed an automated credit update process to improve their responses to customer inquiries received directly from consumers. This, coupled with the new automated consumer dispute verifications received from credit bureaus, will dramatically improve both response time and the effectiveness of the response. It has become evident to credit grantors that assisting credit bureaus in providing a timely and meaningful response to a customer's inquiry is an integral part of its obligation to deliver the best customer service that is reasonably within its power to provide.

The bill under consideration proposes to create substantial compliance obligations and impose major civil and administrative liability upon the hundreds of thousands of creditors that voluntarily report their customers' account payment history to consumer reporting agencies. That would be a drastic departure from the longstanding policy that compliance obligations and civil and administrative liability should be concentrated upon those companies that are in the business of assembling and disseminating third party information.

The net effect of imposing civil and administrative liability upon furnishers of information reported to credit bureaus would be two-fold. First, the threat of administrative challenge in the event of furnishing inaccurate information could force creditors to reduce significantly the frequency and volume of information reported, if not eliminate it entirely. The threat of challenge would outweigh any incentive that exists to regularly report all customers' account histories.

The result of imposing private civil liability upon businesses that furnish information to credit bureaus (consumers would be authorized to sue furnishers as to certain requirements) would be that virtually every delinquent consumer will be assured of having a new cause of action in the event the creditor seeks to recover the balance due on the delinquent account. This cannot be justified by the current state of affairs.

The bill before this Committee would give sweeping authority to State Attorneys General to bring suits in Federal court to obtain relief against anyone who violates the FCRA. Even a technical violation could trigger such enforcement. This would in effect grant each Attorney General the power to establish his or her own set of standards, through the exercise of prosecutorial discretion, in the bringing of cases. Rather than producing nationwide consistency in regulating consumer reporting conduct, this provision could create chaos in the interpretation and enforcement of the FCRA. The notion that every State Attorney General should have license to act as a Federal policymaker could create a legal nightmare for legitimate businesses, especially those operating in a multi-state environment.

The bill before you contains provisions which would impede legitimate business practices without delivering counter-balancing consumer benefits.

The requirement that the consumer be given a "reasonable opportunity to respond" before taking adverse action would cause severe operational problems when hiring is done on a temporary or seasonal basis. There simply is not sufficient time to defer certain hiring decisions until the applicant goes through the process of seeking reinvestigation of his or her credit bureau report.

The bill's limitation that only the consumer's name and address may be furnished for direct marketing purposes would effectively preclude telemarketing efforts and the absence of certain demographic information would hamper the segmentation that is essential in direct marketing efforts. Whether prescreening is done to solicit for credit or to solicit the purchase of goods and services, the only restrictions should be that a firm offer must be made and that the information furnished pertaining to a consumer not identify any particular creditor or other business.

The bill would give consumers an unqualified right to have their credit report include any "relevant" information. That would change the basic nature and character of consumer reports. It could seriously disrupt the process of assembling information and, more important, once collected, the credit bureau report would have to include it in all reports that are furnished. This would make credit bureau reports unwieldy, much more expensive, and incompatible with the computerized on-line communication system that most creditors use today.

The requirement to disclose the type of information furnished and the frequency or circumstances of such reports before reporting information to consumer reporting agencies is not necessary and cannot be justified in view of the proposed liability that alleged noncompliance would entail. In our experience, consumers are well aware that their account history information is reported to credit bureaus. We believe that adding another extensive disclosure to the existing requirements will further exacerbate the phenomenon known as "information overload." Because of the

large number of disclosures that are provided to the consumer at present, there is a tendency for the consumer simply to "tune out" and ignore all of the disclosures.

The check authorization company's report arguably becomes a "consumer report" under the FCRA at the point in time when the information furnished is matched to an individual consumer. The retailer would not, however, be in a position to send that consumer a formal notice of adverse action because there is no record of the consumer's name and address and the retailer may have no idea why the check was not authorized. There is also no practical way for the retailer to provide the "up-front" notice of its information furnishing practices which we feel is unnecessary in any case. There is no account agreement or other written document existing between a check writing customer and the merchant. The bill's authorization to post a notice "at each location where checks are accepted" is not a solution, because "location" could be interpreted to mean each sales counter. Today's retail stores often do not place a cash register on the sales counter, and many merchants' sales environments are not compatible with posting notices.

Any legislation on this subject would be deficient without preemption of State law to ensure that any new Federal FCRA reforms can be implemented in a cost-effective manner. The proposed new Federal law now being considered is not a bare minimum "floor" and preemption is not an anticonsumer measure. There are no special local or regional concerns in the field of consumer reporting that outweigh the need for uniformity.

In order to justify Federal preemption, the following conditions should be present: 1) a problem area that is truly national in scope, 2) a Federal legislative solution that is comprehensive and effective for consumers, regardless of what State or region they inhabit, and 3) the benefits derived from complying with one set of uniform rules outweigh the traditional grant of authority to the States to add their own variations. All of these factors are present here.

The reform of the FCRA that is being considered by this Committee is truly a comprehensive set of new benefits and protections for consumers at the national level. Individual State variations in disclosures, opt-out rules, compliance procedures, etc. are not cost-effective and they do not benefit consumers. Rather than add "diversity," they lead to confusion for consumers and disruption and chaos for industry. When a field is truly national in scope, and the Federal legislative solutions are comprehensive, preemption of State law is the correct, albeit politically difficult, choice to make.

Overview

The Consumer Reporting Reform Act of 1993, a revised version of legislation introduced in the Senate in 1992, would amend the Fair Credit Reporting Act to substantially alter the obligations of consumer reporting agencies, users of consumer reports and companies that furnish information to consumer reporting agencies.

The retailing industry opposes the sweeping reform of the Fair Credit Reporting Act that is envisioned by this bill. The existing law is sound in its basic approach and in the manner in which it operates.

The FCRA properly regulates the businesses that collect credit history information voluntarily furnished to them and which they sell to businesses that have a need for it. That approach to regulation is sound and should not be changed. It strikes a reasonable balance between two important interests—the consumer's right to privacy, to access the consumer reporting agency's file, and to dispute information in that file, and the creditor's legitimate need for immediate access to credit reporting data that is complete and accurate. The creditor's access must also be at a price that is reasonable, because in the final analysis the consumer pays the costs initially borne by business in the prices charged for goods and services. It is essential that the current balance between the consumer's rights and the creditor's needs be maintained if we are to continue to conduct business in today's competitive environment.

Market factors compel creditors to do their utmost to provide, and therefore, receive, the most accurate credit data possible. No retailer wants to turn away a potential customer due to an inaccurate credit report. In this way, the consumer's interest and that of the credit granting community is the same. Moreover, we constantly strive to satisfy our customers when there is an inquiry about the accuracy or completeness of information we voluntarily furnish to credit bureaus.

Some of the changes to the FCRA currently being considered by Congress could significantly increase the costs of consumer reporting and those costs would be passed on to users in the form of higher prices for consumer reports. To the extent that creditors will continue to rely on credit bureau reports in an environment of higher prices for credit reports and new regulatory burdens upon furnishers of information to credit bureaus, those increased costs will ultimately be borne by consum-

ers. Indeed, enactment of FCRA reform legislation could have the effect of forcing some creditors to abandon the longstanding practice whereby non-mortgage creditors do not charge consumers separately for credit reports. Moreover, if the cost of compliance makes credit reports too expensive, creditors are likely to adjust their standards and make credit less available to consumers who are marginal credit risks. These are the very consumers who are more likely to need credit.

In addition to the cost factor, the current approach to regulation should not be changed so that the legal risk of continuing to report our customers' account history outweighs the benefits we derive from participating in the consumer reporting system.

Our statement today consists of five parts. First, we review a number of the recent developments that have significantly improved the services provided by consumer reporting agencies, some of which have been voluntarily adopted and others mandated by Federal and State administrative proceedings. Second, we note a number of steps taken by credit grantors to accommodate consumers' concerns about the information furnished to credit bureaus. Third, we specifically address our most critical concern about this bill—proposed new administrative and civil liability imposed upon furnishers of information. Fourth, we comment upon certain provisions of S. 783 that directly impact upon retailers as users of consumer reports and as businesses that furnish information to consumer reporting agencies. Finally, we discuss the importance of preemption of State law in any FCRA reform legislation. We defer to the consumer reporting industry to address proposed new obligations that would be imposed upon that industry.

Recent Consumer Reporting Industry Changes

Much has changed regarding the manner in which the consumer reporting industry operates since enactment of the FCRA in 1970. Many of the key provisions of S. 783 have already been accommodated by the consumer reporting industry voluntarily, such as the proposed requirement to provide consumers with a "hard copy" of their credit bureau file upon request, instead of merely granting consumers access to the "nature and substance" of the file. Other changes have been brought about by Federal or State administrative actions.

Creditors and credit bureaus are continuously working together to further improve the account history reporting function. Agreement has been reached among furnishers and consumer reporting agencies to report account delinquency in a uniform manner and each credit reporting processing systems has agreed to a "generic" version of the computer tape format as the preferred way for credit bureaus to receive accounts receivable tape information.

Furnishers and consumer reporting agencies are also working hard to maintain the integrity of the credit bureau data base. We think that the most practical approach to consumer reporting is to create a data base that consists of objective information about the number and types of credit accounts and how the accounts are paid, making sure that consumers have the opportunity to dispute any derogatory information, if they believe that it is not accurate, and to have the information updated if it is not complete. The role of the credit bureau is to report the past history and current status of these accounts so that everyone who participates in the credit reporting system can rely on the completeness and accuracy of the credit report.

Accuracy is a two-way street and it is paramount to creditors and credit bureaus. We expect that both the credit granting and credit reporting industries, as well as relevant governmental agencies, will continue to educate consumers about the benefits of paying their debts on time and the consequences of not doing so. As we explain later in this statement, however, we do not believe that the credit bureau file is the appropriate place for the consumer to place any information deemed by the consumer to be "relevant" in an effort to explain objective information maintained by the credit bureau. This could lead to substantial disruption of the credit reporting industry as we have come to know and rely on it. Moreover, it is not necessary to protect consumers' rights. Existing law permits consumers to include their version of any disputed item in their credit bureau file. Further, creditors routinely give consumers the opportunity to explain derogatory information directly, particularly in the case of crucial creditworthiness decisions such as the consumer's application for a mortgage.

We applaud the consumer reporting industry for recognizing that there was and continues to be room for improvement in serving the needs of the persons on whom information is collected and sold to businesses that have a legitimate need for that information. We as users of consumer reports fully endorse those voluntary actions that have been taken by the consumer reporting industry to protect consumers' privacy by offering a means of opting out of the prescreening process and by improving consumers' access to their own credit bureau files, among other recent steps.

In addition to a number of voluntary changes brought about by the consumer reporting industry, recent regulatory requirements agreed to by the three national consumer reporting agencies with State Attorneys General and the Federal Trade Commission,¹ make most of the amendments proposed by S.783 unnecessary. For example, the following changes in industry practices are now mandatory for all credit bureaus affiliated with the three national credit reporting agencies:

1. Provide all consumers toll-free access to the credit bureau.
2. Furnish to the consumer information maintained in his or her file within four business days after receiving the consumer's request.
3. Furnish a report without charge to a consumer if credit has been denied within 60 days (current law provides for a 30 day period) after the consumer's request if the information came from its own files, or if the information that led to the denial was furnished by a competitor.
4. Limit their fee to \$7.50 (TRW) or \$8.00 (Trans Union and Equifax) when a charge is imposed for furnishing a credit report to a consumer (this amount may be adjusted annually based on the Consumer Price Index).
5. Adopt extensive procedures when investigating disputed items, complete the investigation within 30 days of receipt of the consumer's dispute, and provide the consumer with the current correct version of his or her credit report; if the information has not been changed to the consumer's version, notify the consumer of his or her right to file a statement regarding the dispute.
6. Maintain procedures to ensure that inaccurate or unverifiable items that have been deleted or corrected do not reappear in consumer reports.
7. Disclose clearly and conspicuously to the consumer the right to have the credit bureau furnish notice to prior recipients (during the past two years for employment reports and during the past six months for other reports) that an item has been deleted or corrected.
8. Disclose clearly and conspicuously to the consumer in writing the right to dispute any information and the right to have any information deleted if it cannot be reverified.
9. Institute procedures to make the consumer report easier to read for consumers (in Trans Union's case, undertake consumer research through an independent company to determine if the reports may be made easier to read and understand).
10. Institute procedures to ensure that when a consumer has multiple files at the credit bureau, all information in all files is given to the consumer and to the subscriber; and eliminate multiple files after June 30, 1993 (Trans Union's order).
11. Require in all contracts with subscribers that they make a "firm offer of credit" to each consumer whose name appears on a prescreened list and take reasonable steps to enforce those contracts (Trans Union must also request and review a copy of the prescreened mailing).
12. Refuse to create or provide lists to be used to solicit purchase of goods or services (Equifax); use only limited identifying information from its data base to create lists for marketing purposes (TRW).
13. Include in the disclosure to each consumer his or her risk score, together with an explanation of risk scores.

In addition to the above-mentioned provisions of the Consent Decrees/Agreement that parallel provisions in proposed legislation, the following provisions of the Consent Decrees/Agreement mandate the adoption of procedures that go *beyond* provisions in the current FCRA or in proposed legislation:

1. Implement and maintain procedures to prevent the occurrence or reoccurrence of "mixed files" (e.g., a consumer report in which some or all of the information pertains to a person other than the person who is the subject of a consumer report) (Trans Union's order and the Equifax Agreement also require adoption of reasonable measures to prevent reporting of information that is not likely to pertain to the consumer and to prevent duplicate listings of an account with the same member number, opening date and consumer account number).
2. Follow reasonable procedures, before information is used, to detect logical errors in credit information (Trans Union's order refers to "detect data format errors, programming errors or other inaccuracies" instead of "logical errors").
3. Advise all current subscribers and affiliates and new subscribers (and request affiliates to advise their subscribers) that they will be expected to obtain from con-

¹*FTC v. TRW, Inc.*, Civ. Action No. 3-91CV2661-H (N.D. Texas, Dec. 10, 1991), order partially modified Sept. 24, 1992 to cover marketing practices; *TRW, Inc. v. Dan Morales, Attorney General of the State of Texas, et al.*, Civ. Action No. 3-91-1340-11 (N.D. Texas, Dec. 10, 1991) (consent order with 19 State Attorneys General); *Equifax Agreement of Assurances*, accepted July 1992 (agreement with 18 Attorneys General); *Alabama, et al. v. Trans Union Corp.*, Civ. Action No. 92C 7101 (N.D. Ill., Oct. 26, 1992) (consent order with 17 Attorneys General).

sumers "Full Identifying Information" (defined as full last and first name, middle initial, full address and zip code, year of birth, any generational designation, and social security number) and require that subscribers use that information when reporting on consumers to the credit bureau and when requesting consumer reports.

4. Adopt the B2/B3 Segments of the Metro Consumer Reporting Format (the industry standard format for reporting information to credit bureaus).

5. Provide in the consumer report the name, address and telephone number of the affiliate if it is the entity that will perform reinvestigation of information in the report (Trans Union Consent Order and Equifax Agreement).

Credit Grantors' Changes

In the best tradition of voluntary self regulation, credit grantors have worked diligently to improve the accuracy of the information about customers' credit histories that is reported to credit bureaus by on-line data processing systems. It is in our interest as well as consumers' interest to do so. As credit grantors, we depend upon the credit reporting industry to furnish promptly and accurately the payment experiences of consumers.

To assist the credit bureaus in meeting their legal obligations, merchants are improving their accounts receivable tape information systems and augmenting their billing tapes with additional information, all to maintain the best possible data base for reporting to credit bureaus. Credit grantors are redoubling their efforts to help credit bureaus match information to the proper credit bureau file. On their accounts receivable tapes credit grantors are increasingly reporting social security numbers, change of address and change of account number indicators, as well as *historical* payment pattern data. To assist the bureaus in resolving disputes, credit grantors are improving the response time for consumer disputes that are communicated to the credit grantor by the credit bureau. Timely and thorough responses are an important part of the industry's multi-faceted commitment to improve accuracy and maintain the integrity of credit bureau files.

Many credit grantors have developed an automated credit update process to improve their responses to customer inquiries received directly from consumers. This, coupled with the new automated consumer dispute verifications received from credit bureaus, will dramatically improve both response time and the effectiveness of the response. When an inquiry is investigated, the results are now normally reported to all three credit bureau networks, and a confirmation letter is sent to the consumer. While we cannot say that every credit grantor responds to its customers' inquiry in an identical fashion, it has become evident to credit grantors that assisting credit bureaus in providing a timely and meaningful response to a customer's inquiry is an integral part of its obligation to deliver the best customer service that is reasonably within its power to provide.

Proposed Liability Upon Information Furnishers

The decision Congress made two decades ago to enact a law imposing an obligation to protect the privacy of and to grant access to consumer reporting agency files correctly placed that obligation on the companies that compile and sell third party information. We cannot support the bill under consideration today for a number of reasons, the most critical of which is that it proposes to create substantial compliance obligations and impose major civil and administrative liability upon the hundreds of thousands of creditors that voluntarily report their customers' account payment history to consumer reporting agencies. As we said at the outset, that would be a drastic departure from the longstanding policy that compliance obligations and civil and administrative liability should be concentrated upon those companies that are in the business of assembling and disseminating, third party information.

S. 783 provides for civil penalties of up to \$10,000 per violation in an enforcement action brought by the FTC against any person who violates the FCRA. Further, any of 50 State Attorneys General would be authorized to bring a civil action to recover damages on behalf of consumers, to seek any remedy allowed under State law, and to collect a civil penalty of up to \$1,000 for each violation.

S. 783 also includes a private right of action against furnishers of information and, while there is a restriction on private law suits in sections 616 and 617, it is limited to a violation of section 622(a)(1) (e.g., furnishing information if the furnisher knows or should know the information is incomplete or inaccurate). The scope of this restriction is not clear, because section 622(d) provides that sections 616 and 617, the civil liability provisions of the FCRA, shall not apply to any violation of section 622(a) (not just 622(a)(1), as provided in sections 616 and 617).

Despite this apparent inconsistency, consumers would be authorized to sue furnishers of information for any alleged violation of sections 622 (b) and (c) and furnishers would be subject to the aforementioned administrative liability imposed by

the FTC and 50 different State Attorneys General. Thus, the FTC could seek civil penalties and any of 50 State Attorneys General could sue for damages, including punitive damages and minimum statutory damages between \$300 and \$1,000 when alleging that the violation was willful, in the case of (1) the duty not to furnish information if the furnisher knows or should know the information is incomplete or inaccurate; (2) the duty to correct and update information; (3) the duty to provide notice of the consumer's continuing dispute; (4) the duty to provide notice of closed accounts; and (5) the duty to provide notice of the start of delinquency of accounts. Moreover, the FTC, any of 50 State Attorneys General, and any consumer may bring a civil action for damages and attorney's fees, in connection with (1) the duty to provide notice to consumers of information furnished to consumer reporting agencies, describing the type of information furnished and the frequency with which or the circumstances under which that information is furnished; and (2) the duty to review all "relevant information" submitted to the consumer reporting agency by the consumer, complete an investigation with respect to disputed information, and report the results of that investigation within 20 days.

While the courts ultimately will be called upon to harmonize the apparent inconsistency between the exclusion in sections 616 and 617 that is limited to section 622(a)(1), and the provision in section 622(d) that sections 616 and 617 shall not apply to any failure to comply with *subsection (a)* of section 622, there is still enormous exposure to private suits and administrative action that furnishers of information simply cannot accept.

The net effect of imposing civil and administrative liability upon furnishers of information reported to credit bureaus would be two-fold. First, the threat of administrative challenge in the event of furnishing inaccurate information could force creditors to reduce significantly the frequency and volume of information reported, if not eliminate it entirely. The threat of challenge would outweigh any incentive that exists to regularly report all customers' account histories. The adverse effects upon the data base that creditors have come to rely upon could seriously hamper credit granting. To function effectively, the consumer credit marketplace depends upon creditors being willing to regularly report their customers' payment histories. The system simply will not function as effectively if creditors can be sued in connection with their information reporting practices.

The result of imposing private civil liability upon businesses that furnish information to credit bureaus (as noted above, consumers would be authorized to sue furnishers as to certain requirements) would be that virtually every delinquent consumer will be assured of having a new cause of action in the event the creditor seeks to recover the balance due on the delinquent account. This cannot be justified by the current state of affairs.

Consumers at present have substantial rights to dispute their account balances under the fair credit billing act provisions of the Truth-in-Lending Act. When those balances are overdue, and not disputed, what in the past has been a straightforward case of seeking to collect the amount due will become a case of threatened litigation by the debtor over the creditor's FCRA compliance. The mere threat of suit, with the attendant cost of attorney's fees for both parties to be paid by the furnisher, generally means paying the consumer a substantial sum in settlement, irrespective of the merits, because it is more economical to do so. Even for consumers whose accounts are current, challenges to furnishers' compliance will be commonplace. This occurred under the Truth-in-Lending Act between 1969 and 1981, when the TILA Simplification and Reform Act was passed. During that period allegations that the creditor failed to adhere to certain technical requirements of the Truth-in-Lending Act were commonplace. We urge Congress not to repeat that mistake.

State Administrative Enforcement

The bill before this Committee would give sweeping authority to State Attorneys General to bring suits in Federal court to obtain relief against anyone who violates—the FCRA. Even a technical violation could trigger such enforcement.

The bill effectively would grant each Attorney General the power to establish his or her own set of standards, through the exercise of prosecutorial discretion, in the bringing of cases. Regardless of the FTC's position, the notion of what constitutes a violation of the FCRA is inherently susceptible to differing interpretations. Rather than producing nationwide consistency in regulating consumer reporting conduct, this provision could create chaos in the interpretation and enforcement of the FCRA.

The FTC should continue to have sole authority to enforce the FCRA and should be the only and final arbiter of the meaning of the FCRA's provisions, subject to judicial oversight to ensure that the FTC operates within its authority. The notion that every State Attorney General should have license to act as a Federal policy-

maker could create a legal nightmare for legitimate businesses, especially those operating in a multi-state environment.

This grant of authority is unnecessary. The FTC's enforcement authority is a major deterrent to noncompliance and the bill proposes to dramatically increase that authority by adding liability for \$10,000 per violation in civil penalties. Moreover, State Attorneys General already have ample authority to combat unfair and deceptive practices in their States. This can be seen in the increase in activity by a number of individual State Attorneys General in combating unlawful practices and in the NAAG's cooperative activity in this area. Some would cite this increased enforcement activity as justification for turning Federal authority over to the States. In fact, it is clear evidence of the sufficiency of existing State and Federal law.

For years creditors have been careful to refrain from furnishing third party information about their customers, in order to avoid being subject to the complex procedures and substantial civil and administrative liability that attaches to being considered a "consumer reporting agency." NRF strongly opposes any departure from this approach to regulating the field of consumer reporting on the ground that it would unfairly subject creditors to challenge for engaging in legitimate and reasonable business practices. We are unequivocal in our position that, notwithstanding the present proposal to place limits on furnishers' liability in private civil actions, there is no basis for creating a new cause of action by which to challenge creditor information furnishing practices.

As we have said, furnishers of information do maintain their account history records in an accurate manner. It is in their interests to do so. When there is an error, which occurs infrequently, the consumer becomes aware of it in the course of being billed and there are procedures in place under the fair credit billing provisions of the Truth-in-Lending Act to correct any such errors or to permit the consumer to dispute items that cannot be agreed upon.

In today's business environment, credit can be granted virtually instantaneously because the vast majority of credit bureau files are current, complete, and are readily available. Access to those files is immediate and relatively inexpensive in the present regulatory environment. Nothing should be done to alter the current balance that exists between ensuring accuracy and access to the most reliable source of the key predictor of creditworthiness—how consumers pay their existing accounts. Speaking for retailers, we do not need the threat of liability to get our attention. We ask that you carefully examine the recent changes brought about voluntarily as well as those mandated by administrative actions against the consumer reporting industry and let us continue to work to improve the system in an atmosphere characterized by positive rather than negative incentives.

Compliance Burdens Attributable to S. 783

Turning to the specific provisions of S. 783, we acknowledge that a concerted effort was undertaken to review and revise certain previous FCRA reform proposals. A substantial number of provisions that appeared in last session's principal House bill, H.R. 3596 (which was reintroduced in this session as H.R. 619), as well as last year's Senate bill, S. 2776, have been incorporated, in substance, in S. 783. We note a number of significant provisions that accommodate credit grantors' previously explained concerns. For example, S. 783 properly excludes from the FCRA's definition of "consumer report" the sharing of information among affiliated companies for marketing purposes, if certain procedures are followed; authorizes prescreening for marketing purposes; and does not require credit bureaus to furnish consumers a free credit report upon demand. In spite of these important provisions, the bill before you contains other provisions which would impede legitimate business practices without delivering counterbalancing consumer benefits.

Employment Reports

Before taking adverse action on a prospective or an existing employee based on information in a consumer report, the consumer would be required to be given a "reasonable opportunity to respond," unless there is a reasonable belief that fraudulent or criminal activity is involved. In the case of prospective employees, this requirement would cause severe operational problems when hiring is done on a temporary or seasonal basis. There simply is not sufficient time to defer certain hiring decisions until the applicant goes through the process of seeking reinvestigation of his or her credit bureau report. While we are not in a position at this juncture to recommend language to accommodate this and other concerns regarding new compliance obligations in the area of employment reporting, it is a subject that should be examined in more detail before legislation is enacted.

Prescreening for Direct Marketing

The bill's limitation that only the consumer's name and address may be furnished for direct marketing purposes is unnecessarily restrictive. The absence of a telephone number would effectively preclude telemarketing efforts. The absence of certain demographic information would also hamper segmentation that is essential in direct marketing efforts. There is no invasion of privacy or consumer abuse that warrants a different rule when prescreening to solicit for credit and when prescreening to solicit the purchase of goods and services. In both cases, the only restrictions should be that a firm offer must be made and that the information furnished pertaining to a consumer not identify any particular creditor or other business.

Acceptance of Positive Information

The bill before you would amend FCRA section 605 to require that a consumer reporting agency include in the consumer's file "relevant and timely information . . . if it would have a positive impact on a determination of creditworthiness." This means that a consumer would have the right to include in the credit bureau file his or her justification for delinquency, whether valid or not, and could do this for each account that was not paid on time.

Who would decide what is "relevant"? Is it relevant that the consumer was not employed last year and therefore couldn't pay the department store? Is it relevant that he or she quit the job versus having been fired? Was he or she ill during this period? What was the nature of the illness? Is a court's decree for alimony and/or child support relevant? Is it relevant for inclusion in the recipient's as well as the obligor's file? The point is that if consumers have the unqualified right to have their credit report include any "relevant" information, that would change the basic nature and character of consumer reports. It could seriously disrupt the process of assembling information and, more important, once collected, the credit bureau report would have to include it in all reports that are furnished. This would make credit bureau reports unwieldy, much more expensive, and incompatible with the computerized on-line communication system that most creditors use today.

Notwithstanding the provisions authorizing the FTC to implement this new requirement by rule, the credit report should not be changed from today's objective report of the consumer's account history to a subjective series of recitations about why that state of affairs happened. While some consumers would not abuse this new privilege, some would turn it into a license to harass the credit bureau, disrupt the process of consumer reporting, and challenge the credit grantor with failing to consider the consumer's "relevant information," should the consumer be turned down for credit based on the bureau's derogatory information. Indeed, this provision would give the "credit clinic" industry that preys on both consumers and credit bureaus one more tool with which to coerce creditors to delete accurate but derogatory account history information.

New Disclosures For Users

The requirement in proposed section 622(b) to disclose the type of information furnished and the frequency or circumstances of such reports before reporting information to consumer reporting agencies is not necessary and cannot be justified in view of the proposed liability that alleged noncompliance would entail. In our experience, consumers are well aware that their account history information is reported to credit bureaus. Indeed, those consumers who are most affected are reminded of this in the course of collection activities by creditors and debt collectors.

While this proposal envisions a blanket notice when the account is first opened, accommodating yet another disclosure could present operational problems in finding additional space for one more in what has become an ever increasing series of disclosures mandated by Federal law (Truth-in-Lending Act) and State retail installment sales acts before the account is opened.

Putting the operational problems aside, the effectiveness of requiring more disclosure is open to serious question. Creditors' applications are already bursting at the seams from the inclusion of State and federally mandated notices. More important, virtually every open-end credit agreement, which pursuant to Federal and State law must be given to the consumer before the account is used, currently contains a contractual provision disclosing that the creditor will obtain credit reports when reviewing the application and later in connection with extensions of credit, and that the consumer's account history information will be reported to credit bureaus. We believe that adding another extensive disclosure to the existing requirements will further exacerbate the phenomenon known as "information overload." That is, when a large number of disclosures are provided to the consumer in a document, as at

present, there is a tendency for the consumer simply to "tune out" and ignore all of the disclosures.

Check Cashing Reports

Retailers may reject a consumer's check when the check is presented at the cash register, based upon a check authorization company's computer authorization system or upon an encoded list of check-related information. Under current common practice, check authorization does not involve furnishing a "consumer report" because the information does not identify any individual consumer. Arguably, the check authorization company's report becomes a "consumer report" under the FCRA at the point in time when the information furnished is matched to an individual consumer. The retailer would not, however, be in a position to send that consumer a formal notice of adverse action. When the check is declined based on that information, the customer often responds by paying cash or using a third party credit card. Or the consumer may simply leave the store without making the purchase. There is no record of the consumer's name and address and the retailer may have no idea why the check was not authorized. The retailer would thus not be in a position to mail the consumer a typical section 615(a) notice of adverse action.

More important, there is no practical way for the retailer to provide the "up-front" notice of its information furnishing practices which, as we noted above, we feel is unnecessary in any case. There is no account agreement or other written document existing between a check writing customer and the merchant. The bill's authorization to post a notice "at each location where checks are accepted" is not a solution, because "location" could be interpreted to mean each sales counter. Unlike the supermarket check-out counter, today's retail stores often do not place a cash register on the sales counter, and many merchants' sales environments are not compatible with posting notices.

Any FCRA legislation should, at a minimum, exclude check cashing reports from any "up-front" disclosure requirement and any requirement to provide a notice of adverse action should expressly authorize compliance without record retention requirements or individualized disclosures, so that a standard tear-off pad disclosure would suffice.

Absence of Preemption

As we have stated, we do not believe there is a need to amend the FCRA. However, any legislation on this subject would be deficient without preemption of State law to ensure that any new Federal FCRA reforms can be implemented in a cost-effective manner. The proposed new Federal law now being considered is not a bare minimum "floor" and preemption is not an anti-consumer measure. There are no special local or regional concerns in the field of consumer reporting that outweigh the need for uniformity.

It is acknowledged that, in the past, the preemption of State consumer protection laws has been the exception rather than the rule. The reason for this trend has been that, traditionally, Congress has set a "floor" of basic consumer protections and it was anticipated that States would choose to enact additional requirements where that was deemed necessary to protect the residents of a particular State.

In areas essentially involving local concerns, this State-by-State legislative activity has been considered by Congress to be an acceptable way to protect consumers. But the field of consumer reporting is an exceptional situation. Should existing Federal law be amended to create a truly comprehensive network of protections for consumers and corresponding obligations upon consumer reporting agencies and creditors, there would be a compelling need for uniformity.

There are several precedents for Federal preemption of State law. In 1980, Congress preempted State law that set a limit on mortgage interest rates, although it allowed States to override Federal preemption within two years of the enactment of the Federal law. However, the need of the States to address the local concerns and interests of their inhabitants regarding the rate of interest on a mortgage loan can be distinguished from, and does not justify, State-by-State variations in the national field of consumer reporting. The necessity of providing a stable financial climate justified Federal preemption of State due-on-sale clauses in 1983. The national scope of credit card solicitations justified Federal preemption of State law on that subject in 1988.

The fact that preemption of State law has been an infrequent phenomenon does not mean that it is bad policy. In order to justify Federal preemption, the following conditions should be present: 1) a problem area that is truly national in scope, 2) a Federal legislative solution that is comprehensive and effective for consumers, regardless of what State or region they inhabit, and 3) the benefits derived from com-

plying with one set of uniform rules outweigh the traditional grant of authority to the States to add their own variations. All of these factors are present here.

Today, consumers move from one State to another with increasing frequency. This mobility means that consumer reports and credit accounts are rarely situated in a single State. The vast majority of consumer reporting agencies belong to one of three national networks. Creditors, particularly card issuers, are increasingly operating on the national or at least a multi-State level. The day when credit reporting and credit granting was a local matter has by now passed into history.

The reform of the FCRA that is being considered by this Committee is truly a comprehensive set of new benefits and protections for consumers at the national level. Individual State variations in disclosures, opt-out rules, compliance procedures, etc. are not cost-effective and they do not benefit consumers. Rather than add "diversity," they lead to confusion for consumers and disruption and chaos for industry. The consumer reporting field is not decentralized, as are fields such as highway administration, energy assistance for the poor, and education for children with disabilities. When a field is truly national in scope, and the Federal legislative solutions are comprehensive, preemption of State law is the correct, albeit politically difficult, choice to make.

Despite the arguments of certain consumer groups to the contrary, no significant State consumer protections will be abolished by including Federal preemption in the new FCRA. With very few exceptions, existing State laws parallel the 20-year old Federal law, and none expand upon the proposed new Federal reforms, except for the cost of a credit report (when one is not available without charge), which is regulated in a few States. Even in this area, as explained above, there is now virtual uniformity because all three national credit reporting networks have agreed to limit the cost of credit reports.

It is important to remember that the preemption of State FCRA laws would not mean that there will be Federal preemption of State privacy laws. States would still be free to enact laws regulating practices that are outside the scope of the FCRA, such as video privacy protection, electronic communications, and the like.

The consumer reporting and credit granting industries have been able to function without preemption of State law until now because the majority of State enactments have been consistent with the Federal law. But the recent focus on the consumer reporting industry in Congress and in the media has resulted in the introduction of dozens of State consumer reporting bills, and last year new laws were enacted in California, Maine, Maryland and Vermont. This trend must not be permitted to continue.

Moreover, preemption of a few select provisions of State law (sometimes referred to as the "silver bullet" approach) that was included in last year's Senate bill, S.2776, is not an acceptable approach to preemption because *all* sections of the FCRA are interdependent, as explained below.

1. *Definitions* (§603)—The definitions that trigger the obligations of the FCRA, such as "consumer report" and "consumer reporting agency" are the foundation of this law. It is essential that a business operating in one State be treated in the same way as a business engaging in the same activity in another State. Similarly, a "firm offer of credit" in connection with national or multi-State credit card solicitations cannot be defined differently in New York and New Jersey. Uniformity regarding the firm offer of credit is essential for the same reason that Congress decided in 1988 that the Truth-in-Lending disclosures for these solicitations should be uniform.

2. *Permissible Purposes of Reports* (§604)—The permissible purposes that authorize obtaining a credit report are set forth in standard credit bureau contracts subscribed to by national and multi-State credit grantors. These key FCRA rules establish the initial framework upon which all other FCRA rules are based. These rules should be the same in all States to avoid the disruption and burdens that will be caused by administering State variations when a creditor is authorized to obtain a credit report or when prescreening is permitted. For example, the national opt-out system, which arises under the permissible purposes section, could not be operated effectively if States enact different rules that purport to be more protective, such as an "opt-in" procedure instead of the Federal "opt-out".

3. *Obsolescence* (§605)—States might decide to require shorter time periods for reporting adverse information, or impose graduated time periods. This would be extremely disruptive to credit bureaus, the vast majority of which are affiliated with one of the three national consumer reporting agencies. The effect would be that the most restrictive rule imposed by any of the populous States would have to be adopted as the national reporting practice, because implementing different obsolescence procedures for different States would not be feasible. Unless this "lowest common denominator" approach is taken, national credit reporting and credit granting would

be disrupted. Even if credit bureaus could adopt different procedures, national credit grantors would not be able to uniformly apply their credit granting criteria to the credit reports of residents of States that have different obsolescence rules.

4. *Disclosure of Investigative Reports* (§ 606)—Disclosures regarding investigative reports, used primarily in the multi-State insurance and employment areas, would be much more burdensome if different State disclosure requirements were added to the Federal disclosures.

5. *Compliance and Dispute Procedures* (§ 607, § 611)—These rules govern how a consumer reporting agency conducts its business, determines who is entitled to purchase consumer reports, and, among other things, what procedures to follow when a consumer disputes information in his or her file. If States impose different time periods for resolving a dispute, or different procedures for ensuring accuracy, credit bureaus and creditors will be severely hampered in their operations.

6. *Disclosure to Government Agencies* (§ 608)—The long-standing Federal rule permitting a consumer reporting agency to furnish identifying information to a governmental agency could not be uniformly complied with if States were permitted to modify or eliminate it.

7. *Disclosures to Consumers* (§ 609)—The Federal law governs disclosure to the consumer of the information in the credit bureau's files, including the manner of disclosing the information, the sources of the information, and the recipients of the information. Clearly these rules should be permitted to be applied uniformly by the national network of consumer reporting agencies.

8. *Conditions of Disclosure to Consumers* (§ 610)—The Federal rules regarding how disclosures will be made to consumers (in person, by phone, in writing, etc.) and the current law's provision establishing the necessary immunity from suits for defamation, invasion of privacy or negligence with respect to information reported by a consumer reporting agency (except as provided in sections 616 and 617, or as to false information furnished with malice or willful intent to injure), should not be changed on a State-by-State basis. For example, the credit bureau that serves the entire Washington, DC metropolitan area could not reasonably be expected to implement one disclosure procedure for residents of Silver Spring, a different one for residents of Capital Hill, and a third procedure for residents of Arlington, Virginia.

9. *Charges for Disclosures* (§ 612)—The charge that can be imposed when no adverse action has been taken, or when a notification is to be given to a person designated by the consumer pursuant to section 611, need not vary by State, in view of recent developments that ensure relative uniformity in charges imposed by credit bureaus.

10. *Public Record Information for Employment Purpose* (§ 613)—The Federal rule mandating special treatment of public record information when a report is furnished for employment purposes delivers strong protection to consumers and the rule should be uniformly applied.

11. *Restrictions on Investigative Reports* (§ 614)—As noted in item 4 above, investigative reports (which are not used in credit granting) commonly cross State lines and their preparation and communication would be impeded if they are subjected to different rules on a State-by-State basis.

12. *Users of Consumer Reports and Furnishers of Information* (§ 615, § 622)—The disclosures required by credit grantors in section 615, and the procedures and disclosures that would be imposed upon furnishers of information in proposed new section 622, if enacted, would create significant new obligations for credit grantors. Despite our strong objections to some of these provisions, explained above, if they are retained and a bill is enacted, it is essential that States not be permitted to vary and expand upon these new obligations.

We very much appreciate the opportunity to present the views of retailing upon the important subject of consumer reporting practices and we welcome any questions you may have.

103D CONGRESS
1ST SESSION

S. 783

To amend the Fair Credit Reporting Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, MARCH 3), 1993

Mr. BRYAN (for himself, Mr. BOND, and Mr. RIEGLE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend the Fair Credit Reporting Act, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**
- 4 (a) **SHORT TITLE.**—This Act may be cited as the
- 5 “Consumer Reporting Reform Act of 1993”.
- 6 (b) **TABLE OF CONTENTS.**—The following is a table
- 7 of contents for this Act:

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO THE FAIR CREDIT REPORTING ACT

Sec. 101. Definitions.

Sec. 102. Furnishing and using reports; use of information obtained from reports.

Sec. 103. Amendments relating to prescreening of consumer reports.

- Sec. 104. Amendments relating to obsolete information and information contained in consumer reports.
- Sec. 105. Amendments relating to compliance procedures.
- Sec. 106. Amendments relating to consumer disclosures.
- Sec. 107. Amendments relating to procedures in case of the disputed accuracy of any information in a consumer's file.
- Sec. 108. Amendment relating to charges for disclosure.
- Sec. 109. Amendments relating to duties of users of consumer reports.
- Sec. 110. Amendments relating to civil liability.
- Sec. 111. Amendments relating to responsibilities of persons who furnish information to consumer reporting agencies.
- Sec. 112. State action to enforce Act.
- Sec. 113. Administrative enforcement.
- Sec. 114. Establishment of toll-free telephone number.
- Sec. 115. Action by FTC.
- Sec. 116. Effective dates.

TITLE II—CREDIT REPAIR ORGANIZATIONS

- Sec. 201. Regulation of credit repair organizations.

1 **TITLE I—AMENDMENTS TO THE** 2 **FAIR CREDIT REPORTING ACT**

3 **SEC. 101. DEFINITIONS.**

- 4 (a) **ADVERSE ACTION.**—Section 603 of the Fair
- 5 Credit Reporting Act (15 U.S.C. 1681a) is amended by
- 6 adding at the end the following new subsection:

7 “(j) The term ‘adverse action’, when used in connec-

8 tion with any action based in whole or in part on any in-

9 formation contained in a consumer report, means any ac-

10 tion which is adverse or less favorable to the interest of

11 the consumer who is the report subject. Without limiting

12 the general applicability of the foregoing, the following

13 constitute adverse actions:

- 14 “(1) **CREDIT.**—Any denial or revocation of
- 15 credit, any increase in the charge for credit, any
- 16 change in the terms of an existing credit arrange-

1 ment, or any refusal to grant credit in substantially
2 the amount or on substantially the terms requested.
3 Attempts to collect debts owed or allegedly owed
4 shall not be considered 'adverse actions'.

5 “(2) EMPLOYMENT.—Any denial of employment
6 or other adverse or less favorable decision relating to
7 employment purposes.

8 “(3) INSURANCE.—Any denial or cancellation
9 of, any increase in any charge for, or reduction or
10 other adverse or unfavorable change in the terms of
11 coverage or amount of, any insurance, existing or
12 applied for, in connection with the underwriting of
13 insurance.

14 “(4) LICENSE OR BENEFIT.—Any denial or
15 cancellation of, or any increase in any charge for, or
16 any other adverse or unfavorable change in the
17 terms of, any license or benefit described in section
18 604(3)(D).

19 “(5) CONSUMER INITIATED BUSINESS TRANS-
20 ACTION.—Any denial or cancellation of, or any other
21 adverse or unfavorable change in the terms of, any
22 business transaction which the consumer has initi-
23 ated or sought to initiate.”.

1 (b) DEFINITION OF CONSUMER REPORT.—Section
2 603(d) of the Fair Credit Reporting Act (15 U.S.C.
3 1681a(d)) is amended in the second sentence—

4 (1) by inserting before the semicolon at the end
5 of clause (A) “, or any communication of that infor-
6 mation or information (i) from a credit application
7 by a consumer, provided that it is clearly and con-
8 spicuously disclosed with the application that the in-
9 formation may be provided to such entities and the
10 consumer consents to such disclosure, or (ii) among
11 the person making the report, an entity related by
12 common ownership to that person, and an entity af-
13 filiated by corporate control with that person”;

14 (2) in clause (B), by striking “or” after the
15 semicolon at the end; and

16 (3) by inserting before the period the following:
17 “; (D) any communication of information about a
18 consumer between persons who are affiliated by
19 common ownership or common corporate control and
20 in connection with a credit or insurance transaction
21 which is not initiated by the consumer, if either of
22 those persons has complied with section
23 615(d)(2)(B) with respect to a consumer report
24 from which the information is taken and the
25 consumer has consented to use of the report for the

1 transaction in accordance with section 615(d)(2)(C);
2 or (E) any report furnished for use in connection
3 with a transaction which consists of an extension of
4 credit to be used for a commercial purpose”.

5 (c) FIRM OFFER OF CREDIT.—Section 603 of the
6 Fair Credit Reporting Act (15 U.S.C. 1681a) is amended
7 by adding at the end the following new subsection:

8 “(k) The term ‘firm offer of credit’ means any offer
9 of credit to a consumer that will be honored if, based on
10 information in a consumer report on the consumer and
11 other information bearing on the creditworthiness of the
12 consumer, the consumer is determined to meet the criteria
13 used to select the consumer for the offer.”.

14 (d) CREDIT OR INSURANCE TRANSACTION WHICH IS
15 NOT INITIATED BY THE CONSUMER.—Section 603 of the
16 Fair Credit Reporting Act (15 U.S.C. 1681a) is amended
17 by adding at the end the following new subsection:

18 “(l) The term ‘credit or insurance transaction which
19 is not initiated by the consumer’ does not include the use
20 of a consumer report by a person with which the consumer
21 has an account, for purposes of—

22 “(1) reviewing the account; or

23 “(2) collecting the account.”.

1 SEC. 102. FURNISHING AND USING REPORTS; USE OF IN-
2 FORMATION OBTAINED FROM REPORTS.

3 (a) USE OF REPORTS FOR EMPLOYMENT AND BUSI-
4 NESS PURPOSES.—Section 604 of the Fair Credit Report-
5 ing Act (15 U.S.C. 1681b) is amended—

6 (1) by striking “A consumer reporting agency
7 may furnish” and inserting “(a) IN GENERAL.—A
8 consumer reporting agency may furnish”;

9 (2) in subsection (a)(3) (as designated by para-
10 graph (1)), by amending subparagraph (E) to read
11 as follows:

12 “(E) otherwise has a legitimate business
13 need for the information in connection with a
14 business transaction that—

15 “(i) is initiated by the consumer; or

16 “(ii) is a direct marketing transaction
17 for which the furnishing of a consumer re-
18 port by the agency is not prohibited under
19 subsection (e).”; and

20 (3) by adding at the end the following new
21 subsection:

22 “(b) CONDITIONS FOR FURNISHING AND USING
23 CONSUMER REPORTS FOR EMPLOYMENT PURPOSES.—

24 “(1) CERTIFICATION FROM USER.—A consumer
25 reporting agency may furnish a consumer report for
26 employment purposes only—

1 “(A) if the person who obtains such report
2 from the agency certifies to the agency that—

3 “(i) the disclosure required under
4 paragraph (2) or (3), as the case may be,
5 with respect to such consumer report has
6 been made; and

7 “(ii) information from the consumer
8 report will not be used in violation of any
9 applicable Federal or State equal employ-
10 ment opportunity law or regulation; and

11 “(B) if the consumer reporting agency pro-
12 vides with the report a summary of the consum-
13 er’s rights under this title, as prescribed by the
14 Federal Trade Commission under section
15 609(c)(3).

16 “(2) DISCLOSURES TO PROSPECTIVE AND CUR-
17 RENT EMPLOYEES.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), a person may not procure a
20 consumer report, or cause a consumer report to
21 be procured, for employment purposes with re-
22 spect to any prospective or current employee
23 unless—

24 “(i) the prospective or current em-
25 ployee has received, before the report is

1 procured, a clear and conspicuous disclo-
2 sure made in writing that consumer re-
3 ports may be used for employment pur-
4 poses; and

5 “(ii) the prospective or current em-
6 ployee has provided a general or specific
7 written authorization for the procurement
8 of the report prior to such procurement.

9 “(B) WRITTEN MATERIAL CONSTITUTING
10 NOTICE.—A written statement that consumer
11 reports may be used for employment purposes
12 which is contained in employee guidelines or
13 manuals available to employees and prospective
14 employees or included in written materials pro-
15 vided to such persons shall constitute a written
16 disclosure for purposes of subparagraph (A).

17 “(3) CONDITIONS ON USE FOR ADVERSE AC-
18 TIONS.—Before taking any adverse action based on
19 a consumer report used for employment purposes, a
20 person shall provide to the consumer to whom the
21 report relates—

22 “(A) a copy of the report;

23 “(B) a description of the consumer’s rights
24 under this title, as prescribed by the Federal
25 Trade Commission under section 609(c)(3); and

9

1 “(C) a reasonable opportunity to respond
2 to any information in the report that is dis-
3 puted by the consumer, except that if the per-
4 son has a reasonable belief that the consumer
5 has engaged in fraudulent or criminal activity,
6 no such opportunity to respond shall be
7 required.”.

8 (b) USE OF INFORMATION OBTAINED FROM RE-
9 PORTS.—Section 604 of the Fair Credit Reporting Act (15
10 U.S.C. 1681b) is further amended by adding at the end
11 the following new subsection:

12 “(c) CERTAIN USE OR OBTAINING OF INFORMATION
13 PROHIBITED.—A person shall not use or obtain informa-
14 tion from a consumer report for any purpose unless—

15 “(1) it is obtained for a purpose for which the
16 consumer report is authorized to be furnished under
17 subsection (a); and

18 “(2) the purpose is certified in accordance with
19 section 607 by a prospective user of the report.”.

20 (c) DISCLOSURE OF CONSUMER REPORTS BY
21 USERS.—Section 607 of the Fair Credit Reporting Act
22 (15 U.S.C. 1681e) is amended by adding at the end the
23 following new subsection:

24 “(c) DISCLOSURE OF CONSUMER REPORTS BY
25 USERS ALLOWED.—A consumer reporting agency may not

1 prohibit a user of a consumer report furnished by the
2 agency on a consumer from disclosing the contents of the
3 report to the consumer if adverse action against the
4 consumer has been taken or is contemplated by the user,
5 based in whole or in part on the report.”.

6 **SEC. 103. AMENDMENTS RELATING TO PRESCREENING OF**
7 **CONSUMER REPORTS.**

8 (a) IN GENERAL.—Section 604 of the Fair Credit
9 Reporting Act (15 U.S.C. 1681b), as amended by section
10 102, is further amended—

11 (1) in subsection (a), by striking “A consumer
12 reporting agency” and inserting “Subject to sub-
13 section (d), any consumer reporting agency”; and

14 (2) by adding at the end the following new
15 subsection:

16 “(d) LIMITATIONS ON REPORTS RELATING TO CRED-
17 IT OR INSURANCE TRANSACTIONS NOT INITIATED BY THE
18 CONSUMER.—

19 “(1) IN GENERAL.—A consumer reporting
20 agency may furnish a consumer report relating to
21 any consumer pursuant to subsection (a)(3)(A) to
22 any person referred to in such subsection in connec-
23 tion with any solicitation for credit or insurance that
24 is not initiated by the consumer only if—

1 “(A) the consumer authorizes the agency
2 to provide such report to such person; or

3 “(B)(i) the transaction consists of a firm
4 offer of credit or insurance;

5 “(ii) the consumer reporting agency has
6 complied with subsection (f); and

7 “(iii) the consumer has not elected in ac-
8 cordance with subsection (f)(1) to have the con-
9 sumer’s name and address excluded from lists
10 provided by the agency pursuant to paragraph
11 (1)(B).

12 “(2) LIMITS ON INFORMATION RECEIVED
13 UNDER PARAGRAPH (1)(B).—A person may receive
14 pursuant to paragraph (1)(B) only—

15 “(A) the name and address of a consumer;
16 and

17 “(B) information pertaining to a consumer
18 that is not identified or identifiable with the
19 consumer.

20 “(3) INFORMATION REGARDING INQUIRIES.—
21 Except as provided in section 609(a)(4), a consumer
22 reporting agency shall not furnish to any person a
23 record of inquiries resulting from credit or insurance
24 transactions which are not initiated by a
25 consumer.”.

1 (b) FURNISHING CONSUMER REPORTS FOR DIRECT
2 MARKETING TRANSACTIONS.—Section 604 of the Fair
3 Credit Reporting Act (15 U.S.C. 1681b) is further amend-
4 ed by adding at the end the following new subsections:

5 “(e) FURNISHING CONSUMER REPORTS FOR DIRECT
6 MARKETING TRANSACTIONS NOT INITIATED BY
7 CONSUMER.—

8 “(1) FURNISHING REPORTS PROHIBITED.—A
9 consumer reporting agency may not furnish a
10 consumer report for use for a direct marketing
11 transaction that is not initiated by the consumer to
12 whom the report relates, if—

13 “(A) the consumer notifies the agency that
14 the consumer does not consent to that use;

15 “(B) the report includes any information
16 other than the name and address of the
17 consumer; or

18 “(C) furnishing the information would dis-
19 close the credit payment history, credit limit,
20 credit balance, or any negative information per-
21 taining to the consumer.

22 “(2) NOTIFICATION.—A consumer may notify a
23 consumer reporting agency for purposes of para-
24 graph (1)(A) either—

25 “(A) in writing; or

1 “(B) in the case of an agency which com-
2 piles and maintains files on consumers on a na-
3 tionwide basis, by calling the toll-free telephone
4 number established pursuant to subsection
5 (f)(3).

6 “(f) ELECTION OF CONSUMER TO BE EXCLUDED
7 FROM LISTS.—

8 “(1) IN GENERAL.—A consumer may elect to
9 have his or her name and address excluded from any
10 list provided by a consumer reporting agency pursu-
11 ant to subsection (e)(2), by—

12 “(A) notifying the agency, through the no-
13 tification system maintained by the agency
14 under paragraph (3), that the consumer does
15 not consent to any use of consumer reports re-
16 lating to the consumer in connection with any
17 credit or insurance transaction which is not ini-
18 tiated by the consumer; or

19 “(B) returning to the agency a signed
20 written notice of the election, if provided by the
21 agency in accordance with paragraph (2).

22 “(2) PROVISION OF WRITTEN NOTICE TO
23 CONSUMER.—A consumer reporting agency shall
24 mail to a consumer a written notice for purposes of
25 paragraph (1)(B), not later than 5 business days

1 after being notified of the election of the consumer
2 in accordance with paragraph (1)(A).

3 “(3) NOTIFICATION SYSTEM.—Each consumer
4 reporting agency which furnishes a consumer report
5 pursuant to subsection (a)(3)(A) in connection with
6 any credit or insurance transaction which is not ini-
7 tiated by a consumer shall establish and maintain a
8 notification system, including a toll-free telephone
9 number, which permits any consumer whose
10 consumer report is maintained by the agency to no-
11 tify the agency, with appropriate identification, of
12 the consumer’s election to have the consumer’s name
13 and address excluded from any list of names and ad-
14 dresses provided by the agency pursuant to sub-
15 section (d)(1)(B). Establishment and maintenance of
16 a nationwide notification system and publication by
17 a consumer reporting agency on a nationwide basis
18 in accordance with this paragraph shall be consid-
19 ered to be in compliance with this paragraph by each
20 affiliate of the agency.

21 “(4) AGENCIES WHICH OPERATE NATION-
22 WIDE.—Each consumer reporting agency which com-
23 piles and maintains files on consumers on a nation-
24 wide basis shall establish and maintain a notification

1 system under paragraph (3) jointly with other such
2 consumer reporting agencies.

3 “(5) EFFECTIVENESS OF ELECTION.—An elec-
4 tion of a consumer under paragraph (1)—

5 “(A) shall be effective with respect to a
6 consumer reporting agency beginning on the
7 date on which the consumer notifies the agency
8 in accordance with paragraph (1)(A);

9 “(B) shall be effective—

10 “(i) for a period of 2 years after that
11 effective date; or

12 “(ii) permanently, as may be specified
13 by the consumer in his or her notification
14 of election under paragraph (1)(B), except
15 that the consumer may notify the agency
16 at any time of a change of election in ac-
17 cordance with paragraph (1); and

18 “(C) shall be effective with respect to each
19 affiliate of the agency.”.

20 (c) FIRST NOTIFICATIONS BY CONSUMERS.—A
21 consumer may notify a consumer reporting agency
22 through a notification system established and maintained
23 by the agency under section 604(f) of the Fair Credit Re-
24 porting Act on or after the date which is 1 year after the
25 date of enactment of this Act.

1 SEC. 104. AMENDMENTS RELATING TO OBSOLETE INFOR-
2 MATION AND INFORMATION CONTAINED IN
3 CONSUMER REPORTS.

4 (a) REPEAL OF EXEMPTION PROVISIONS.—Section
5 605(a) of the Fair Credit Reporting Act (15 U.S.C.
6 1681c(a)) is amended in subsection (a), by striking “(a)
7 Except as authorized under subsection (b) of this section,
8 no” and inserting “(a) OBSOLETE INFORMATION.—Ex-
9 cept as otherwise specifically authorized, no”.

10 (b) ADDITIONAL INFORMATION ON BANKRUPTCY
11 FILINGS REQUIRED.—Section 605(b) of the Fair Credit
12 Reporting Act (15 U.S.C. 1681c(b)) is amended to read
13 as follows:

14 “(b) INFORMATION REQUIRED TO BE DISCLOSED.—
15 Any consumer reporting agency that furnishes a consumer
16 report that contains information regarding any case in-
17 volving the consumer which arises under title 11, United
18 States Code, shall include in the report an identification
19 of the chapter of such title 11 under which such case
20 arises if provided by the source of the information. If any
21 case arising or filed under title 11, United States Code,
22 is withdrawn by the consumer prior to a final judgment,
23 the consumer reporting agency shall include in the report
24 that such case or filing was withdrawn upon receipt of
25 documentation certifying such withdrawal.”.

1 (c) CLARIFICATION OF REPORTING PERIOD.—Sec-
2 tion 605 of the Fair Credit Reporting Act (15 U.S.C.
3 1681c) is further amended by adding at the end the fol-
4 lowing new subsection:

5 “(c) RUNNING OF REPORTING PERIOD.—The 7-year
6 period referred to in paragraphs (4) and (6) of subsection
7 (a) shall begin, with respect to any delinquent account
8 which is placed for collection (internally or by referral to
9 a third party, whichever is earlier), charged to profit and
10 loss, or subjected to any similar action, upon the expira-
11 tion of the 180-day period beginning on the date of the
12 commencement of the delinquency which immediately pre-
13 ceded the collection activity, charge to profit and loss, or
14 similar action.”.

15 (d) DISCLOSURE OF PERSONAL INFORMATION.—Sec-
16 tion 605 of the Fair Credit Reporting Act (15 U.S.C.
17 1681c) is further amended by adding at the end the fol-
18 lowing new subsection:

19 “(d) DISCLOSURE OF PERSONAL INFORMATION.—A
20 person who prepares any credit report which includes per-
21 sonal credit information on any consumer shall not include
22 in the report any adverse item of information on the
23 consumer with respect to transactions which antedate the
24 report by more than 10 years or which could not be in-

1 cluded in any consumer report on the consumer in accord-
2 ance with this section.”.

3 (e) INDICATION OF CLOSURE OF ACCOUNT.—Section
4 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c)
5 is further amended by adding at the end the following new
6 subsection:

7 “(e) INDICATION OF CLOSURE OF ACCOUNT BY
8 CONSUMER.—If a consumer reporting agency is notified
9 pursuant to section 622(a)(4) that a credit account of a
10 consumer was voluntarily closed by the consumer, the
11 agency shall indicate that fact in any consumer report that
12 includes information related to the account.”.

13 (f) POSITIVE INFORMATION.—Section 605 of the
14 Fair Credit Reporting Act (15 U.S.C. 1681c) is further
15 amended by adding at the end the following new sub-
16 section:

17 “(f) ACCEPTANCE OF CERTAIN INFORMATION.—A
18 consumer reporting agency shall accept from a consumer
19 and include in the consumer’s file relevant and timely in-
20 formation that is not in computerized form if the
21 information—

22 “(1) would have a positive impact on a deter-
23 mination of creditworthiness of the consumer; and

1 “(2) is submitted in a form and manner that
2 complies with regulations of the Federal Trade
3 Commission.”.

4 (g) CLERICAL AMENDMENTS.—

5 (1) SECTION HEADING.—The heading for sec-
6 tion 605 of the Fair Credit Reporting Act (15
7 U.S.C. 1681e) is amended by striking “**OBSOLETE**
8 **INFORMATION**” and inserting “**REQUIREMENTS**
9 **RELATING TO INFORMATION CONTAINED IN**
10 **CONSUMER REPORTS**”.

11 (2) TABLE OF SECTIONS.—The table of sections
12 at the beginning of the Fair Credit Reporting Act
13 (15 U.S.C. 1681a et seq.) is amended by striking
14 the item relating to section 605 and inserting the
15 following:

“605. Requirements relating to information contained in consumer re-
ports.”.

16 **SEC. 105. AMENDMENTS RELATING TO COMPLIANCE PRO-**
17 **CEDURES.**

18 (a) NOTICE TO USERS AND PROVIDERS OF INFORMA-
19 TION TO ENSURE COMPLIANCE.—

20 (1) IN GENERAL.—Section 607 of the Fair
21 Credit Reporting Act (15 U.S.C. 1681e), as amend-
22 ed by section 102, is amended by adding at the end
23 the following new subsection:

1 “(d) NOTICE TO USERS AND FURNISHERS OF INFOR-
2 MATION.—A consumer reporting agency shall provide a
3 notice to any person—

4 “(1) who regularly and in the ordinary course
5 of business furnishes information to the agency with
6 respect to any consumer; or

7 “(2) to whom a consumer report is provided by
8 the agency;
9 of such person’s responsibilities under this title.”.

10 (2) CONTENT OF NOTICE.—The Federal Trade
11 Commission shall prescribe the content of notices
12 under section 607(d) of the Fair Credit Reporting
13 Act by not later than 1 year after the date of enact-
14 ment of this Act.

15 (b) RECORD OF IDENTITY OF USERS AND PURPOSES
16 CERTIFIED BY USERS OF REPORTS.—Section 607 of the
17 Fair Credit Reporting Act (15 U.S.C. 1681e) is further
18 amended by adding at the end the following new sub-
19 section:

20 “(e) PROCUREMENT OF CONSUMER REPORT FOR
21 RESALE.—

22 “(1) DISCLOSURE.—A person may not procure
23 a consumer report for purposes of reselling the re-
24 port (or the information contained in the report) un-

1 less the person discloses to the consumer reporting
2 agency which originally furnished the report—

3 “(A) the identity of the ultimate end-user
4 of the report (or the information), and

5 “(B) each permissible purpose under sec-
6 tion 604 for which the report is furnished to
7 the ultimate end-user of the report (or the
8 information).

9 “(2) RESPONSIBILITIES OF PROCURERS FOR
10 RESALE.—A person who procures a consumer report
11 for purposes of reselling the report (or the informa-
12 tion contained in the report) shall—

13 “(A) establish and comply with reasonable
14 procedures designed to ensure that the report
15 (or the information) is resold by the person only
16 for a purpose for which the report may be fur-
17 nished under section 604, including by ensuring
18 that the person—

19 “(i) identifies each prospective user of
20 the resold report (or the information);

21 “(ii) certifies each purpose for which
22 the report (or the information) will be
23 used; and

1 “(iii) certifies that the report (or the
2 information) will be used for no other pur-
3 pose; and

4 “(B) before reselling the report, make rea-
5 sonable efforts to verify the identifications and
6 certifications made under subparagraph (A).”.

7 **SEC. 106. AMENDMENTS RELATING TO CONSUMER DISCLO-**
8 **SURES.**

9 (a) **ALL INFORMATION IN CONSUMER'S FILE RE-**
10 **QUIRED TO BE DISCLOSED.**—Section 609(a)(1) of the
11 Fair Credit Reporting Act (15 U.S.C. 1681g(a)(1)) is
12 amended to read as follows:

13 “(1) All information in the consumer's file at
14 the time of the request.”.

15 (b) **MORE INFORMATION CONCERNING RECIPIENTS**
16 **OF REPORTS REQUIRED.**—Section 609(a)(3) of the Fair
17 Credit Reporting Act (15 U.S.C. 1681g(a)(3)) is amended
18 to read as follows:

19 “(3)(A) Identification of each person who pro-
20 cured a consumer report—

21 “(i) for employment purposes within the 2-
22 year period preceding the request; and

23 “(ii) for any other purpose within the 1-
24 year period preceding the request.

1 “(B) An identification of a person under sub-
2 paragraph (A) shall include—

3 “(i) the name of the person or, if applica-
4 ble, the trade name (written in full) under
5 which such person conducts business; and

6 “(ii) upon request of the consumer, the ad-
7 dress and telephone number of the person.”.

8 (c) INFORMATION REGARDING INQUIRIES.—Section
9 609(a) of the Fair Credit Reporting Act (15 U.S.C.
10 1681g(a)) is further amended by adding at the end the
11 following new paragraph:

12 “(4) A record of all inquiries received by the
13 agency in the 1-year period preceding the request
14 that identified the consumer in connection with a
15 credit or insurance transaction which is not initiated
16 by the consumer.”.

17 (d) SUMMARY OF RIGHTS REQUIRED TO BE IN-
18 CLUDED WITH DISCLOSURE.—

19 (1) IN GENERAL.—Section 609 of the Fair
20 Credit Reporting Act (15 U.S.C. 1681g) is amended
21 by adding at the end the following new subsection:

22 “(c) SUMMARY OF RIGHTS REQUIRED TO BE IN-
23 CLUDED WITH DISCLOSURE.—

24 “(1) SUMMARY OF RIGHTS.—A consumer re-
25 porting agency shall provide to a consumer, on or

1 with each written disclosure by the agency to the
2 consumer under this section—

3 “(A) a written summary of all rights the
4 consumer has under this title; and

5 “(B) in the case of a consumer reporting
6 agency which compiles and maintains consumer
7 reports on a nationwide basis, a toll-free tele-
8 phone number which the consumer can use to
9 communicate with the agency.

10 “(2) SPECIFIC ITEMS REQUIRED TO BE IN-
11 CLUDED.—The summary of rights required under
12 paragraph (1) shall include—

13 “(A) a brief description of this title and all
14 rights of consumers under this title;

15 “(B) an explanation of how the consumer
16 may exercise the rights of the consumer under
17 this title;

18 “(C) a list of all Federal agencies respon-
19 sible for enforcing any provision of this title
20 and the address and any appropriate telephone
21 number of each such agency, in a form that will
22 assist the consumer in selecting the appropriate
23 agency; and

24 “(D) a statement that a consumer report-
25 ing agency is not required to remove accurate

25

1 derogatory information from a consumer's file,
2 unless the information is outdated under sec-
3 tion 605 or cannot be verified.

4 “(3) FORM OF SUMMARY OF RIGHTS.—For pur-
5 poses of this subsection and any disclosure by a
6 consumer reporting agency required under this title
7 with respect to consumers' rights, the Federal Trade
8 Commission (after consultation with each Federal
9 agency referred to in section 621(b)) shall prescribe
10 the form and content of any disclosure of the rights
11 of consumers required under this title.”.

12 (2) TECHNICAL AMENDMENT.—Section
13 606(a)(1)(B) of the Fair Credit Reporting Act (15
14 U.S.C. 1681d(a)(1)(B)) is amended by inserting
15 “and the written summary of the rights of the
16 consumer prepared pursuant to section 609(c)” be-
17 fore the semicolon.

18 (e) FORM OF DISCLOSURES.—

19 (1) IN GENERAL.—Subsections (a) and (b) of
20 section 610 of the Fair Credit Reporting Act (15
21 U.S.C. 1681h) are amended to read as follows:

22 “(a) WRITTEN DISCLOSURE.—The disclosures re-
23 quired to be made under section 609 shall be provided to
24 a consumer in writing.

25 “(b) OTHER FORMS OF DISCLOSURE.—

1 “(1) IN GENERAL.—In addition to the written
2 disclosures required by subsection (a), a consumer
3 reporting agency may make the disclosures required
4 under section 609 other than in written form if—

5 “(A) the consumer authorizes the disclo-
6 sure;

7 “(B) the consumer furnishes proper identi-
8 fication to the consumer reporting agency;

9 “(C) the consumer specifies the form of
10 disclosure; and

11 “(D) such form of disclosure is available
12 from the agency.

13 “(2) FORM.—A consumer may specify pursuant
14 to paragraph (1) that disclosures under section 609
15 shall be made—

16 “(A) in person, upon the appearance of the
17 consumer at the place of business of the
18 consumer reporting agency where disclosures
19 are regularly provided, during normal business
20 hours, and on reasonable notice;

21 “(B) by telephone, if the consumer has
22 made a written request for disclosure by tele-
23 phone that includes the proper identification of
24 the consumer, as required by paragraph (1)(B);

1 “(C) by electronic means, if available from
2 the agency; or

3 “(D) by any other reasonable means that
4 is available from the agency.”.

5 (2) SIMPLIFIED DISCLOSURE.—Not later than
6 90 days after the effective date of this Act, each
7 consumer reporting agency shall develop a form on
8 which such consumer reporting agency shall make
9 the disclosures required under section 609(a) of the
10 Fair Credit Reporting Act, for the purpose of maxi-
11 mizing the comprehensibility and standardization of
12 such disclosures. The Federal Trade Commission
13 shall take appropriate action to assure that the goals
14 of comprehensibility and standardization are
15 achieved.

16 (3) CONFORMING AMENDMENTS.—

17 (A) SECTION HEADING.—Section 610 of
18 the Fair Credit Reporting Act (15 U.S.C.
19 1681h) is amended in the heading for the sec-
20 tion by inserting “AND FORM” after “CONDI-
21 TIONS”.

22 (B) TABLE OF SECTIONS.—The table of
23 sections at the beginning of the Fair Credit Re-
24 porting Act (15 U.S.C. 1681a et seq.) is

1 amended in the item relating to section 610 by
2 inserting "and form" after "Conditions".

3 **SEC. 107. AMENDMENTS RELATING TO PROCEDURES IN**
4 **CASE OF THE DISPUTED ACCURACY OF ANY**
5 **INFORMATION IN A CONSUMER'S FILE.**

6 (a) **IN GENERAL.**—Section 611(a) of the Fair Credit
7 Reporting Act (15 U.S.C. 1681i(a)) is amended to read
8 as follows:

9 **"(a) REINVESTIGATION OF DISPUTED INFORMA-**
10 **TION.—**

11 **"(1) IN GENERAL.**—If the completeness or ac-
12 curacy of any item of information contained in any
13 consumer's file at any consumer reporting agency is
14 disputed by the consumer and the consumer notifies
15 the agency directly of such dispute, the agency shall
16 reinvestigate free of charge and record the current
17 status of the disputed information before the end of
18 the 30-day period beginning on the date the agency
19 receives the notice of the dispute from the consumer.

20 **"(2) PROMPT NOTICE OF DISPUTE TO FUR-**
21 **NISHER OF INFORMATION.**—Not later than 5 busi-
22 ness days after the date on which a consumer re-
23 porting agency receives notice of a dispute from any
24 consumer in accordance with paragraph (1), the
25 agency shall notify any person who provided any

1 item of information in dispute at the address and in
2 the manner established with the person.

3 “(3) DETERMINATION THAT DISPUTE IS FRIVO-
4 LOUS OR IRRELEVANT.—

5 “(A) IN GENERAL.—Notwithstanding para-
6 graph (1), a consumer reporting agency may
7 terminate a reinvestigation of information dis-
8 puted by a consumer under that paragraph if
9 the agency reasonably determines that dispute
10 by the consumer is frivolous or irrelevant, in-
11 cluding by reason of a failure by a consumer to
12 provide sufficient information to investigate the
13 dispute.

14 “(B) NOTICE OF DETERMINATION.—Not
15 later than 5 business days after making any de-
16 termination in accordance with subparagraph
17 (A) that a dispute is frivolous or irrelevant, a
18 consumer reporting agency shall mail to the
19 consumer a written notification of such deter-
20 mination (including the reasons for the deter-
21 mination), and, if authorized by the consumer
22 for that purpose, by any other means available
23 to the agency.

24 “(4) CONSIDERATION OF CONSUMER INFORMA-
25 TION.—In conducting any reinvestigation under

1 paragraph (1) with respect to disputed information
2 in the file of any consumer, the consumer reporting
3 agency shall review and consider all relevant infor-
4 mation submitted by the consumer in the period de-
5 scribed in paragraph (1) with respect to such dis-
6 puted information.

7 "(5) DELETION OF INACCURATE OR UNVERIFI-
8 ABLE INFORMATION.—

9 "(A) IN GENERAL.—If, in the course of
10 any reinvestigation under paragraph (1) of any
11 information disputed by a consumer, an item of
12 the information is found to be inaccurate or
13 cannot be verified, the consumer reporting
14 agency shall promptly delete that item of infor-
15 mation from the consumer's file.

16 "(B) REQUIREMENTS RELATING TO
17 REINSERTION OF PREVIOUSLY DELETED MATE-
18 RIAL.—

19 "(i) CERTIFICATION OF ACCURACY OF
20 INFORMATION.—If any information is de-
21 leted from a consumer's file pursuant to
22 subparagraph (A), the information may
23 not be reinserted in the file after the dele-
24 tion unless the person who furnishes the

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1 information certifies that the information
2 is complete and accurate.

3 “(ii) NOTICE TO CONSUMER.—If any
4 information which has been deleted from a
5 consumer’s file pursuant to subparagraph
6 (A) is reinserted in the file in accordance
7 with clause (i), the consumer reporting
8 agency shall, not later than 5 business
9 days after such deletion, mail to the
10 consumer written notification of the
11 reinsertion, and, if authorized by the
12 consumer for that purpose, by any other
13 means available to the agency.

14 “(C) PROCEDURES TO PREVENT RE-
15 APPEARANCE.—A consumer reporting agency
16 shall maintain reasonable procedures designed
17 to prevent the reappearance in a consumer’s
18 file, and in consumer reports on the consumer,
19 of information that is deleted pursuant to this
20 paragraph (other than information that is
21 reinserted in accordance with subparagraph
22 (B)(i)).

23 “(6) NOTICE OF RESULTS OF
24 REINVESTIGATION.—

1 “(A) IN GENERAL.—A consumer reporting
2 agency shall mail to the consumer written noti-
3 fication of the results of a reinvestigation under
4 this subsection not later than 5 business days
5 after the completion of the reinvestigation, and,
6 if authorized by the consumer for that purpose,
7 by other means available to the agency.

8 “(B) CONTENTS.—As part of or in addi-
9 tion to the notice under subparagraph (A), a
10 consumer reporting agency shall provide to a
11 consumer in writing within the 5-business-day
12 period referred to in subparagraph (A)—

13 “(i) a statement that the
14 reinvestigation is completed;

15 “(ii) a consumer report that is based
16 upon the consumer’s file as that file is re-
17 vised as a result of the reinvestigation;

18 “(iii) a description or indication of
19 any changes made in the consumer report
20 as a result of those revisions to the con-
21 sumer’s file;

22 “(iv) a notice to the consumer that, if
23 requested by the consumer, a description
24 of the procedure used to determine the ac-
25 curacy and completeness of the informa-

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1 tion shall be provided to the consumer by
2 the agency, including the name, business
3 address, and telephone number of any fur-
4 nisher of information contacted in connec-
5 tion with such information;

6 “(v) a notification that the consumer
7 has the right to add a statement to the
8 consumer’s file disputing the accuracy or
9 completeness of the information; and

10 “(vi) a clear and conspicuous notifica-
11 tion of the right of the consumer to re-
12 quest under subsection (d) that the
13 consumer reporting agency furnish notifi-
14 cations under that subsection.

15 “(7) DESCRIPTION OF REINVESTIGATION
16 PROCEDURE.—A consumer reporting agency
17 shall provide to a consumer a description re-
18 ferred to in paragraph (6)(B)(iv) by not later
19 than 15 days after receiving a request from the
20 consumer for that description.”.

21 (b) CONFORMING AMENDMENT.—Section 611(d) of
22 the Fair Credit Reporting Act (15 U.S.C. 1681i(d)) is
23 amended by striking “The consumer reporting agency
24 shall clearly” and all that follows through the end of the
25 subsection.

1 SEC. 108. AMENDMENT RELATING TO CHARGES FOR DIS-
2 CLOSURE.

3 Section 612 of the Fair Credit Reporting Act (15
4 U.S.C. 1681j) is amended to read as follows:

5 **"§ 612. Charges for disclosures and certain notices**
6 **prohibited**

7 "(a) FREE CONSUMER REPORTS.—Each consumer
8 reporting agency that maintains a file on a consumer shall
9 make all disclosures pursuant to section 609 without
10 charge to the consumer—

11 "(1) if the consumer makes a request under
12 section 609, not later than 60 days after receipt by
13 such consumer of a notification pursuant to section
14 615 or of a notification from a debt collection agen-
15 cy affiliated with that consumer reporting agency
16 stating that the consumer's credit rating may be or
17 has been adversely affected; and

18 "(2) upon written request by the consumer not
19 later than 1 year after the consumer receives a noti-
20 fication under subsection (b)(2).

21 "(b) CHARGE FOR CERTAIN NOTICES PROHIB-
22 ITED.—A consumer reporting agency shall not impose any
23 charge for—

24 "(1) providing a notice required under section
25 611(a)(6); or

1 “(2) notifying a person pursuant to section
 2 611(d) of the deletion of information which is found
 3 to be inaccurate or which can no longer be verified,
 4 if the consumer designates that person to the agency
 5 before the end of the 30-day period beginning on the
 6 date of the notification of the consumer under sec-
 7 tion 611(a)(6).”.

8 **SEC. 109. AMENDMENTS RELATING TO DUTIES OF USERS**
 9 **OF CONSUMER REPORTS.**

10 (a) DUTIES OF USERS TAKING ADVERSE ACTIONS.—
 11 Section 615(a) of the Fair Credit Reporting Act (15
 12 U.S.C. 1681m(a)) is amended to read as follows:

13 “(a) DUTIES OF USERS TAKING ADVERSE ACTIONS
 14 ON THE BASIS OF INFORMATION CONTAINED IN
 15 CONSUMER REPORTS.—If any person takes any adverse
 16 action with respect to any consumer in connection with
 17 credit, employment purposes, insurance underwriting, any
 18 license or benefit described in section 604(3)(D), or any
 19 business transaction involving the consumer which is
 20 based, in whole or in part, on any information contained
 21 in a consumer report, the person shall—

22 “(1) provide written notice of the adverse action
 23 to the consumer;

24 “(2) provide the consumer—

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1 “(A) the name, address, and telephone
2 number of the consumer reporting agency which
3 furnished the report to the person; and

4 “(B) a statement that the consumer re-
5 porting agency did not make the decision to
6 take the adverse action;

7 “(3) provide to the consumer a written notice of
8 the consumer’s right—

9 “(A) to obtain, under section 612, a free
10 copy of a consumer report on the consumer,
11 from the consumer reporting agency referred to
12 in paragraph (2) and from any other consumer
13 reporting agency which compiles and maintains
14 files on consumers on a nationwide basis; and

15 “(B) to dispute, under section 611, with a
16 consumer reporting agency the accuracy or
17 completeness of any information in a consumer
18 report furnished by the agency; and

19 “(4) in the case of an adverse action based in
20 whole or in part on a credit score or other credit rat-
21 ing system, provide to the consumer—

22 “(A) notice that the credit scoring system
23 was used; and

24 “(B) the principal reasons for that credit
25 score, if those reasons are required to be dis-

1 closed by the person for purposes of compliance
2 with section 701(d)(3) of the Equal Credit
3 Opportunity Act.”.

4 (b) DUTIES OF USERS WHO MAKE CERTAIN SOLICI-
5 TATIONS.—Section 615 of the Fair Credit Reporting Act
6 (15 U.S.C. 1681m) is further amended by adding at the
7 end the following new subsection:

8 “(d) DUTIES OF USERS WHO MAKE WRITTEN CRED-
9 IT OR INSURANCE SOLICITATIONS ON THE BASIS OF IN-
10 FORMATION CONTAINED IN CONSUMER FILES.—

11 “(1) IN GENERAL.—Any person who uses a
12 consumer report of any consumer in connection with
13 any credit or insurance transaction which is not ini-
14 tiated by the consumer and which consists of a firm
15 offer of credit or insurance shall provide on or with
16 any written solicitation made to the consumer re-
17 garding the transaction a clear and conspicuous
18 statement that—

19 “(A) information contained in the consum-
20 er’s consumer report was used in connection
21 with the transaction;

22 “(B) the consumer received the offer of
23 credit or insurance because the consumer satis-
24 fied the criteria for creditworthiness under
25 which the consumer was selected for the offer;

1 “(C) if applicable, the credit or insurance
2 may not be extended if, after the consumer re-
3 sponds to the offer, the consumer does not meet
4 the original criteria used to select the consumer
5 for the offer;

6 “(D) no new criteria for creditworthiness
7 will be imposed on the consumer other than the
8 original criteria used to select the consumer for
9 the offer;

10 “(E) the consumer has a right to prohibit
11 information contained in the consumer's file
12 with any consumer reporting agency to be used
13 in connection with any credit or insurance
14 transaction that is not initiated by the
15 consumer; and

16 “(F) the consumer may exercise the right
17 referred to in subparagraph (E) by using the
18 joint notification system established under sec-
19 tion 604(e)(4).

20 “(2) LIMITATION ON APPLICATION.—Paragraph
21 (1) does not apply to the use of a consumer report
22 by a person if—

23 “(A) the person is affiliated by common
24 ownership or by common corporate control with
25 the person who procured the report;

1 “(B) the person who procured the report
2 clearly and conspicuously disclosed to the
3 consumer to whom the report relates, before the
4 report is provided to the person who will use
5 the report, that the report might be provided to
6 and used by other persons who are affiliated in
7 the manner described in subparagraph (A) to
8 the person who procured the report; and

9 “(C) that provision and use of the report
10 is consented to by the consumer in writing.

11 “(3) FALSE AND MISLEADING STATEMENTS.—

12 No statement accompanying a credit or insurance
13 transaction that is not initiated by the consumer
14 shall contain any false or misleading information
15 concerning any condition or criteria for the extension
16 of credit (or offer therefore) to the consumer.

17 “(4) MAINTAINING CRITERIA ON FILE.—A per-
18 son who makes an offer of credit or insurance to a
19 consumer under a credit or insurance transaction
20 described in paragraph (1) shall maintain on file the
21 criteria used to select the consumer to receive the
22 offer, until the end of the 3-year period beginning on
23 the date on which the offer is made to the
24 consumer.”.

1 (c) DUTIES OF USERS FOR DIRECT MARKETING
2 TRANSACTIONS NOT INITIATED BY CONSUMERS.—Section
3 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m)
4 is further amended by adding at the end the following new
5 subsection:

6 “(e) DUTIES OF USERS FOR DIRECT MARKETING
7 TRANSACTIONS NOT INITIATED BY CONSUMERS.—Any
8 person who, in connection with a direct marketing trans-
9 action that is not initiated by a consumer, uses informa-
10 tion concerning the consumer that is provided by a
11 consumer reporting agency shall provide to the consumer
12 with each communication regarding the transaction made
13 to the consumer a clear and conspicuous written
14 statement—

15 “(1) that information concerning the consumer
16 that was provided by a consumer reporting agency
17 was used in connection with the transaction;

18 “(2) that the consumer has the right under sec-
19 tion 604(e) to prohibit any information concerning
20 the consumer from being provided by the consumer
21 reporting agency for use in connection with any di-
22 rect marketing transaction that is not initiated by
23 the consumer;

24 “(3) that the consumer may exercise the right
25 referred to in paragraph (2) by notifying the

1 consumer reporting agency in writing or, in the case
2 of a consumer reporting agency required to establish
3 a toll-free telephone number pursuant to section
4 604(d)(4), by calling that number; and

5 “(4) disclosing the name, address, and, in the
6 case of a consumer reporting agency required to es-
7 tablish a toll-free telephone number pursuant to sec-
8 tion 604(d)(4), the toll-free telephone number at
9 which the agency may be notified.”.

10 **SEC. 110. AMENDMENTS RELATING TO CIVIL LIABILITY.**

11 (a) **WILLFUL FAILURE TO COMPLY.**—Section 616 of
12 the Fair Credit Reporting Act (15 U.S.C. 1681n) is
13 amended to read as follows:

14 **“SEC. 616. CIVIL LIABILITY FOR WILLFUL NONCOMPLI-**
15 **ANCE.**

16 “(a) **IN GENERAL.**—Any person who willfully fails to
17 comply with any requirement imposed under this title with
18 respect to any consumer is liable to that consumer in an
19 amount prescribed under subsection (c).,

20 “(b) **EXCEPTION.**—A person has no liability to a
21 consumer under this section for a violation of section
22 622(a)(1).

23 “(c) **DAMAGES.**—Liability for a willful failure to com-
24 ply described in subsection (a) shall be in an amount equal
25 to the sum of—

1 “(1) any actual damages sustained by the
2 consumer as a result of the failure;

3 “(2) an amount not less than \$300 nor greater
4 than \$1,000;

5 “(3) such punitive damages as the court may
6 allow; and

7 “(4) in the case of any successful action to en-
8 force any liability under this section—

9 “(A) the costs of the action; and

10 “(B) reasonable attorney’s fees, as deter-
11 mined by the court.”.

12 (b) **NEGLIGENT FAILURE TO COMPLY.**—Section 617
13 of the Fair Credit Reporting Act (15 U.S.C. 1681o) is
14 amended to read as follows:

15 **“SEC. 617. CIVIL LIABILITY FOR NEGLIGENT NONCOMPLI-**
16 **ANCE.**

17 “(a) **IN GENERAL.**—Any person who is negligent in
18 failing to comply with any requirement of this title with
19 respect to a consumer shall be liable to that consumer in
20 an amount prescribed in subsection (c).

21 “(b) **EXCEPTION.**—A person has no liability to a
22 consumer under this section for a violation of section
23 622(a)(1).

1 “(c) DAMAGES.—Liability for a negligent failure to
2 comply described in subsection (a) shall be in an amount
3 equal to the sum of—

4 “(1) any actual damage sustained by a
5 consumer as a result of the failure; and

6 “(2) in the case of any successful action to en-
7 force liability under this section—

8 “(A) the costs of the action; and

9 “(B) reasonable attorney’s fees, as deter-
10 mined by the court.”.

11 **SEC. 111. AMENDMENTS RELATING TO RESPONSIBILITIES**
12 **OF PERSONS WHO FURNISH INFORMATION**
13 **TO CONSUMER REPORTING AGENCIES.**

14 (a) IN GENERAL.—The Fair Credit Reporting Act
15 (15 U.S.C. 1681 et seq.) is amended—

16 (1) by redesignating sections 622 and 623 as
17 sections 623 and 624; and

18 (2) by inserting after section 621 the following
19 new section:

20 **“SEC. 622. RESPONSIBILITIES OF FURNISHERS OF INFOR-**
21 **MATION TO CONSUMER REPORTING AGEN-**
22 **CIES.**

23 “(a) DUTY OF FURNISHERS OF INFORMATION TO
24 PROVIDE COMPLETE AND ACCURATE INFORMATION.—

1 “(1) IN GENERAL.—A person shall not furnish
2 any information to any consumer reporting agency if
3 the person knows or should know the information is
4 incomplete or inaccurate.

5 “(2) DUTY TO CORRECT AND UPDATE INFOR-
6 MATION.—A person who—

7 “(A) in the ordinary course of business,
8 regularly and on a routine basis furnishes infor-
9 mation to one or more consumer reporting
10 agencies about their own transactions or experi-
11 ences with a consumer; and

12 “(B) furnishes information to a consumer
13 reporting agency, that the person determines is
14 not complete or accurate;
15 shall promptly notify the consumer reporting agency
16 of that determination and provide to the agency any
17 corrections to that information, or any additional in-
18 formation, that is necessary to make the information
19 provided by the person to the agency complete and
20 accurate.

21 “(3) DUTY TO PROVIDE NOTICE OF CONTINU-
22 ING DISPUTE.—If the completeness or accuracy of
23 any information furnished by any person to any
24 consumer reporting agency continues to be disputed
25 to such person, the person may not furnish the in-

1 formation to any consumer reporting agency without
2 notice that such information is disputed by the
3 consumer.

4 “(4) DUTY TO PROVIDE NOTICE OF CLOSED AC-
5 COUNTS.—A person who regularly furnishes infor-
6 mation to a consumer reporting agency regarding a
7 consumer who has a credit account with that person
8 shall notify the agency of the closure of that account
9 by the consumer in information regularly furnished
10 for the period in which the account is closed.

11 “(5) DUTY TO PROVIDE NOTICE OF DELIN-
12 QUENCY OF ACCOUNTS.—A person who furnishes in-
13 formation to a consumer reporting agency regarding
14 a delinquent account being placed for collection,
15 charged to profit or loss, or subjected to any similar
16 action shall notify the agency of the commencement
17 of the delinquency immediately preceding that ac-
18 tion, by not later than 90 days after the date of that
19 commencement.

20 “(b) NOTICE TO CONSUMERS OF INFORMATION FUR-
21 NISHED TO CONSUMER REPORTING AGENCIES.—

22 “(1) NOTICE REQUIRED.—A person who in the
23 ordinary course of business regularly and on a rou-
24 tine basis furnishes information about that person’s
25 transactions or experiences with any consumer to

1 any consumer reporting agency, shall give notice of
2 that fact in writing to the consumer before first pro-
3 viding any information about the consumer to any
4 consumer reporting agency.

5 "(2) CONTENTS OF NOTICE.—Written notice
6 provided to a consumer by a person pursuant to
7 paragraph (1) shall contain—

8 "(A) a brief description of the type of in-
9 formation that may be furnished regularly to
10 any consumer reporting agency; and

11 "(B) a brief description of the frequency
12 with which or the circumstances under which
13 information is furnished to any consumer re-
14 porting agency.

15 "(3) NOTICE BY CERTAIN PERSONS.—A person
16 who furnishes information about consumers who
17 have written checks with insufficient funds may give
18 notice for purposes of paragraph (1) by posting the
19 notice in a conspicuous manner at each location
20 where checks are accepted by the person.

21 "(c) DUTIES OF FURNISHERS OF INFORMATION
22 UPON NOTICE OF DISPUTE.—Upon receiving notice pur-
23 suant to section 611(a)(2) of a dispute with regard to the
24 completeness or accuracy of any information provided by

1 a person to a consumer reporting agency, the person
2 shall—

3 “(1) complete an investigation with respect to
4 the disputed information and report to the consumer
5 reporting agency the results of that investigation be-
6 fore the end of the 20-day period beginning on the
7 date the agency receives notices of a dispute from
8 the consumer in accordance with section 611(a)(1);
9 and

10 “(2) review relevant information submitted to
11 the consumer reporting agency by the consumer in
12 accordance with section 611(a)(4).

13 “(d) LIMITATIONS.—

14 “(1) CIVIL LIABILITY.—Sections 616 and 617
15 shall not apply to any failure to comply with sub-
16 section (a).

17 “(2) ENFORCEMENT.—Subsection (a) shall be
18 enforced exclusively under section 621 by the agen-
19 cies identified in that section.

20 “(3) INJUNCTIVE RELIEF.—In an action alleg-
21 ing a violation of subsection (a)(1), the court shall
22 have jurisdiction to enjoin the violation only where
23 the action is brought by the Federal Trade Commis-
24 sion or the attorney general of a State.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for title VI of the Consumer Credit Protection Act is
3 amended by redesignating the item relating to sections
4 622 and 623 as sections 623 and 624, and inserting after
5 the item relating to section 621 the following new item:

“622. Responsibilities of furnishers of information to consumer reporting agencies.”.

6 **SEC. 112. STATE ACTION TO ENFORCE ACT.**

7 Section 621 of the Fair Credit Reporting Act (15
8 U.S.C. 1681s) is amended by adding at the end the follow-
9 ing new subsection:

10 “(d) STATE ACTION TO ENFORCE ACT.—If any per-
11 son violates any requirement imposed under this title, the
12 chief law enforcement officer of the State in which such
13 violation occurred (or an official or agency designated by
14 that State) may bring an action—

15 “(1) to restrain such violation;

16 “(2) to recover amounts for which such person
17 is liable under this title to each person on whose be-
18 half the action is brought;

19 “(3) to seek such remedies as are allowed under
20 the law of such State; or

21 “(4) to collect a civil penalty of not more than
22 \$1,000 for each such violation.”.

1 **SEC. 113. ADMINISTRATIVE ENFORCEMENT.**

2 (a) IN GENERAL.—Section 621(a) of the Fair Credit
3 Reporting Act (15 U.S.C. 1681s(a)) is amended in the
4 second sentence—

5 (1) by striking “Act and shall be subject to en-
6 forcement by the Federal Trade Commission under
7 section 5(b) thereof with respect to any consumer re-
8 porting agency or person subject to enforcement by
9 the Federal Trade Commission pursuant to this sub-
10 section, irrespective” and inserting “Act. All func-
11 tions and powers of the Federal Trade Commission
12 under the Federal Trade Commission Act shall be
13 available to the Federal Trade Commission to en-
14 force compliance with this title by any person sub-
15 ject to enforcement by the Federal Trade Commis-
16 sion pursuant to this subsection, irrespective”; and

17 (2) by inserting before the period “, including
18 the power to enforce the provisions of this title in
19 the same manner as if the violation had been a vio-
20 lation of any Federal Trade Commission trade regu-
21 lation rule”.

22 (b) FEDERAL RESERVE BOARD INTERPRETIVE AU-
23 THORITY.—Section 621 of the Fair Credit Reporting Act
24 (15 U.S.C. 1681s) is amended by adding at the end the
25 following new subsection:

1 “(e) INTERPRETIVE AUTHORITY.—The Board of
2 Governors of the Federal Reserve System may issue an
3 interpretation of any provision of this title as it may apply
4 to any person identified in paragraph (1), (2), or (3) of
5 subsection (b), and the holding companies and affiliates
6 of such person, in consultation with the Federal agencies
7 identified in paragraph (1), (2), or (3) of subsection (b).”.

8 **SEC. 114. ESTABLISHMENT OF TOLL-FREE TELEPHONE**
9 **NUMBER.**

10 Each consumer reporting agency which compiles and
11 maintains consumer reports on a nationwide basis shall
12 establish (and thereafter maintain) a toll-free telephone
13 number pursuant to section 609(c)(1)(B) of the Fair
14 Credit Reporting Act, as amended by section 106(d), not
15 later than 1 year after the date of enactment of this Act.

16 **SEC. 115. ACTION BY FTC.**

17 The Federal Trade Commission shall prescribe all
18 matters required by this title (including the amendments
19 made by this title) to be prescribed by the Federal Trade
20 Commission not later than 270 days after the date of en-
21 actment of this Act.

22 **SEC. 116. EFFECTIVE DATES.**

23 (a) IN GENERAL.—Except as provided in subsection
24 (b), the amendments made by this title shall become effec-
25 tive 1 year after the date of enactment of this Act.

1 (b) EXCEPTIONS.—Notwithstanding the provisions of
 2 subsection (a), the Federal Trade Commission may pre-
 3 scribe regulations, as required by this title and the amend-
 4 ments made by this title.

5 **TITLE II—CREDIT REPAIR** 6 **ORGANIZATIONS**

7 **SEC. 201. REGULATION OF CREDIT REPAIR ORGANIZA-** 8 **TIONS.**

9 Title IV of the Consumer Credit Protection Act is
 10 amended to read as follows:

11 **“TITLE IV—CREDIT REPAIR** 12 **ORGANIZATIONS**

“Sec.

“401. Short title.

“402. Findings and purposes.

“403. Definitions.

“404. Prohibited practices by credit repair organizations.

“405. Disclosures.

“406. Credit repair organizations contracts.

“407. Right to cancel contract.

“408. Noncompliance with this title.

“409. Civil liability.

“410. Administrative enforcement.

13 **“SEC. 401. SHORT TITLE.**

14 “This title may be cited as the ‘Credit Repair Organi-
 15 zations Act’.

16 **“SEC. 402. FINDINGS AND PURPOSES.**

17 “(a) FINDINGS.—The Congress finds—

18 “(1) consumers have a vital interest in estab-
 19 lishing and maintaining their creditworthiness and
 20 credit standing in order to obtain and use credit. As

1 a result, consumers who have experienced credit
2 problems may seek assistance from credit repair or-
3 ganizations which offer to improve the credit stand-
4 ing of such consumers; and

5 “(2) certain advertising and business practices
6 of some companies engaged in the business of credit
7 repair services have worked a financial hardship
8 upon consumers, particularly those of limited eco-
9 nomic means and who are inexperienced in credit
10 matters.

11 “(b) PURPOSES.—The purposes of this title are—

12 “(1) to ensure that prospective buyers of the
13 services of credit repair organizations are provided
14 with the information necessary to make an informed
15 decision regarding the purchase of such services; and

16 “(2) to protect the public from unfair or decep-
17 tive advertising and business practices by credit re-
18 pair organizations.

19 **“SEC. 403. DEFINITIONS.**

20 “For purposes of this title:

21 “(1) CONSUMER.—The term ‘consumer’ means
22 an individual.

23 “(2) CONSUMER CREDIT TRANSACTION.—The
24 term ‘consumer credit transaction’ means any trans-
25 action in which credit is offered or extended to an

1 individual for personal, family, or household pur-
2 poses.

3 “(3) CREDIT REPAIR ORGANIZATION.—The
4 term ‘credit repair organization’—

5 “(A) means any person who uses any in-
6 strumentality of interstate commerce or the
7 mails to sell, provide, or perform (or represent
8 that such person can or will sell, provide, or
9 perform) any service, in return for the payment
10 of money or other valuable consideration, for
11 the express or implied purpose of—

12 “(i) improving any consumer’s credit
13 record, credit history, or credit rating;

14 “(ii) removing adverse credit informa-
15 tion that is accurate and not obsolete from
16 the consumer’s record, history, or rating;

17 “(iii) altering the consumer’s identi-
18 fication to prevent the display of the con-
19 sumer’s credit record, history, or rating for
20 the purpose of concealing adverse credit in-
21 formation that is accurate and not obso-
22 lete; or

23 “(iv) providing advice or assistance to
24 any consumer with regard to any activity

1 or service described in clause (i), (ii), or
2 (iii); and

3 “(B) does not include—

4 “(i) any nonprofit organization which
5 is exempt from taxation under section
6 501(c)(3) of the Internal Revenue Code of
7 1986; or

8 “(ii) any attorney at law who is a
9 member of the bar of the highest court of
10 any State or otherwise licensed under the
11 laws of any State, with respect to services
12 rendered that are within the scope of regu-
13 lations applicable to members of such bar
14 or such licensees.

15 “(4) CREDIT.—The term ‘credit’ has the same
16 meaning as in section 103(e).

17 **“SEC. 404. PROHIBITED PRACTICES BY CREDIT REPAIR**
18 **ORGANIZATIONS.**

19 “No credit repair organization, and no officer, em-
20 ployee, agent, or other person participating in the conduct
21 of the affairs of any credit repair organization, may—

22 “(1) charge or receive any money or other valu-
23 able consideration for the performance of any service
24 that the credit repair organization has agreed to

1 perform for any consumer before such service is fully
2 performed;

3 “(2) make any statement, or counsel or advise
4 any consumer to make any statement, which is un-
5 true or misleading (or which, upon the exercise of
6 reasonable care, should be known by the credit re-
7 pair organization, officer, employee, agent, or other
8 person to be untrue or misleading) with respect to
9 any consumer’s creditworthiness, credit standing, or
10 credit capacity to—

11 “(A) any consumer reporting agency (as
12 defined in section 603(f)); or

13 “(B) any person—

14 “(i) who has extended credit to the
15 consumer; or

16 “(ii) to whom the consumer has ap-
17 plied or is applying for an extension of
18 credit;

19 “(3) make any statement, or counsel or advise
20 any consumer to make any statement, the intended
21 effect of which is to alter the consumer’s identifica-
22 tion to prevent the display of the consumer’s credit
23 record, history, or rating for the purpose of conceal-
24 ing adverse credit information that is accurate and
25 not obsolete to—

1 “(A) any consumer reporting agency; or

2 “(B) any person—

3 “(i) who has extended credit to the
4 consumer; or

5 “(ii) to whom the consumer has ap-
6 plied or is applying for an extension of
7 credit;

8 “(4) make or use any untrue or misleading rep-
9 resentation of the services of the credit repair orga-
10 nization; or

11 “(5) engage, directly or indirectly, in any act,
12 practice, or course of business that constitutes or re-
13 sults in the commission of, or an attempt to commit,
14 a fraud or deception on any person in connection
15 with the offer or sale of the services of the credit re-
16 pair organization.

17 **“SEC. 405. DISCLOSURES.**

18 “(a) **DISCLOSURE REQUIRED.**—Before any contract
19 or agreement between a consumer and a credit repair
20 organization is executed, the credit repair organization
21 shall provide the consumer with the following written
22 statement:

1 **“Consumer Credit File Rights**
2 **Under State and Federal Law**

3 “You have a right to dispute inaccurate information
4 in your credit report by contacting the credit bureau di-
5 rectly. However, neither you nor any “credit repair” com-
6 pany or credit repair organization has the right to have
7 accurate, current, and verifiable information removed
8 from your credit report. The credit bureau must remove
9 accurate, negative information from your report only if it
10 is over 7 years old. Bankruptcy information can be re-
11 ported for 10 years.

12 “You have a right to obtain a copy of your credit
13 report from a credit bureau. You may be charged a rea-
14 sonable fee. There is no fee, however, if you have been
15 turned down for credit, employment, insurance, or a rental
16 dwelling because of information in your credit report with-
17 in the preceding 60 days. The credit bureau must provide
18 someone to help you interpret the information in your
19 credit file. A credit report is available annually at no
20 charge.

21 “You have a right to sue a credit repair company
22 that violates the Credit Repair Organization Act. This law
23 prohibits deceptive practices by credit repair companies.

1 "You have the right to cancel your contract with any
2 credit repair organization for any reason within 3 business
3 days from the date you signed it.

4 "Credit bureaus are required to follow reasonable
5 procedures to ensure that creditors report information ac-
6 curately. However, mistakes may occur.

7 "You may, on your own, notify a credit bureau in
8 writing that you dispute the accuracy of information in
9 your credit file. The credit bureau must then reinvestigate
10 and modify or remove inaccurate information. The credit
11 bureau may not charge any fee for this service. Any perti-
12 nent information and copies of all documents you have
13 concerning an error should be given to the credit bureau.

14 "If reinvestigation does not resolve the dispute to
15 your satisfaction, you may send a brief statement to the
16 credit bureau, to be kept in your file, explaining why you
17 think the record is inaccurate. The credit bureau must in-
18 clude your statement about disputed information with any
19 report it issues about you.

20 "The Federal Trade Commission regulates credit
21 bureaus and credit repair organizations. For more infor-
22 mation contact:

1 “Public Reference Branch
2 Federal Trade Commission
3 Washington, D.C. 20580.’

4 “(b) SEPARATE STATEMENT REQUIREMENT.—The
5 written statement required under this section shall be pro-
6 vided as a document which is separate from any written
7 contract or other agreement between the credit repair or-
8 ganization and the consumer or any other written material
9 provided to the consumer.

10 “(c) RETENTION OF COMPLIANCE RECORDS.—

11 “(1) IN GENERAL.—The credit repair organiza-
12 tion shall maintain a copy of the statement signed
13 by the consumer acknowledging receipt of the state-
14 ment.

15 “(2) MAINTENANCE FOR 2 YEARS.—The copy
16 of any consumer’s statement shall be maintained in
17 the organization’s files for 2 years after the date on
18 which the statement is provided to the consumer.

19 **“SEC. 406. CREDIT REPAIR ORGANIZATIONS CONTRACTS.**

20 “(a) WRITTEN CONTRACTS REQUIRED.—A credit re-
21 pair organization may not provide services for any
22 consumer unless a written and dated contract (for the pur-
23 chase of such services) which meets the requirements of
24 subsection (b) has been signed by the consumer.

1 “(b) TERMS AND CONDITIONS OF CONTRACT.—No
2 contract referred to in subsection (a) meets the require-
3 ments of this subsection unless such contract includes the
4 following information (in writing):

5 “(1) The terms and conditions of payment, in-
6 cluding the total amount of all payments to be made
7 by the consumer to the credit repair organization or
8 to any other person.

9 “(2) A full and detailed description of the serv-
10 ices to be performed by the credit repair organiza-
11 tion for the consumer, including—

12 “(A) all guarantees and all promises of full
13 or partial refunds; and

14 “(B) an estimate of—

15 “(i) the date by which the perform-
16 ance of the services (to be performed by
17 the credit repair organization or any other
18 person) will be complete; or

19 “(ii) the length of the period nec-
20 essary to perform such services.

21 “(3) The credit repair organization’s name and
22 principal business address.

23 “(4) A conspicuous statement in boldface type,
24 in immediate proximity to the space reserved for the
25 consumer’s signature on the contract, which reads as

1 follows: 'You may cancel this contract without pen-
2 alty or obligation at any time before midnight of the
3 third business day after the date on which you
4 signed the contract. See the attached notice of can-
5 cellation form for an explanation of this right.'

6 **"SEC. 407. RIGHT TO CANCEL CONTRACT.**

7 "(a) IN GENERAL.—Any consumer may cancel any
8 contract with any credit repair organization without pen-
9 alty or obligation by notifying the credit repair organiza-
10 tion of the consumer's intention to do so at any time be-
11 fore midnight of the third business day which begins on
12 the date on which the contract or agreement between the
13 consumer and the credit repair organization is executed
14 or would, but for this subsection, become enforceable
15 against the parties.

16 "(b) CANCELLATION FORM AND OTHER INFORMA-
17 TION.—Each contract shall be accompanied by a form, in
18 duplicate, which has the heading 'Notice of Cancellation'
19 and contains in boldface type the following statement:

20 "You may cancel this contract, without any
21 penalty or obligation, at any time before midnight of
22 the third business day which begins after the date
23 the contract is signed by you.

24 "If you cancel, any payment you made under
25 this contract will be returned before the end of the

1 10-day period beginning on the date the seller re-
 2 ceives your cancellation notice.

3 “To cancel this contract, mail or deliver a
 4 signed, dated copy of this cancellation notice, or any
 5 other written notice to [insert name of credit repair
 6 organization] at [insert address of credit repair or-
 7 ganization] before midnight on [insert date].

8 “I hereby cancel this transaction.

9 “_____ (purchaser’s signature)

10 “_____ (date)’.

11 “(c) CONSUMER COPY OF CONTRACT REQUIRED.—

12 Any consumer who enters into any contract with any cred-
 13 it repair organization shall be given, by the organization—

14 “(1) a copy of the completed contract and the
 15 disclosure statement required under section 405; and

16 “(2) a copy of any other document the credit
 17 repair organization requires the consumer to sign,
 18 at the time the contract or the other document is signed.

19 “SEC. 408. NONCOMPLIANCE WITH THIS TITLE.

20 “(a) CONSUMER WAIVERS INVALID.—Any waiver by
 21 any consumer of any protection provided by or any right
 22 of the consumer under this title—

23 “(1) shall be treated as void; and

24 “(2) may not be enforced by any Federal or
 25 State court or any other person.

1 “(b) ATTEMPT TO OBTAIN WAIVER.—Any attempt
2 by any credit repair organization to obtain a waiver from
3 any consumer of any protection provided by or any right
4 of the consumer under this title shall be treated as a viola-
5 tion of this title.

6 “(c) CONTRACTS NOT IN COMPLIANCE.—Any con-
7 tract for services which does not comply with the applica-
8 ble provisions of this title—

9 “(1) shall be treated as void; and

10 “(2) may not be enforced by any Federal or
11 State court or any other person.

12 **“SEC. 409. CIVIL LIABILITY.**

13 “(a) LIABILITY ESTABLISHED.—Any credit repair
14 organization which fails to comply with any provision of
15 this title with respect to any person shall be liable to such
16 person in an amount equal to the sum of the amounts
17 determined under each of the following paragraphs:

18 “(1) ACTUAL DAMAGES.—The greater of—

19 “(A) the amount of any actual damage
20 sustained by such person as a result of such
21 failure; or

22 “(B) any amount paid by the person to the
23 credit repair organization.

24 “(2) PUNITIVE DAMAGES.—

1 “(A) INDIVIDUAL ACTIONS.—In the case of
2 any action by an individual, such additional
3 amount as the court may allow.

4 “(B) CLASS ACTIONS.—In the case of a
5 class action, the sum of—

6 “(i) the aggregate of the amount
7 which the court may allow for each named
8 plaintiff; and

9 “(ii) the aggregate of the amount
10 which the court may allow for each other
11 class member, without regard to any mini-
12 mum individual recovery.

13 “(3) ATTORNEYS’ FEES.—In the case of any
14 successful action to enforce any liability under para-
15 graph (1) or (2), the costs of the action, together
16 with reasonable attorneys’ fees.

17 “(b) FACTORS TO BE CONSIDERED IN AWARDING
18 PUNITIVE DAMAGES.—In determining the amount of any
19 liability of any credit repair organization under subsection
20 (a)(2), the court shall consider, among other relevant
21 factors—

22 “(1) the frequency and persistence of non-
23 compliance by the credit repair organization;

24 “(2) the nature of the noncompliance;

1 “(3) the extent to which such noncompliance
2 was intentional; and

3 “(4) in the case of any class action, the number
4 of consumers adversely affected.

5 “(c) JURISDICTION.—Any action under this section
6 may be brought in any United States district court, or
7 in any other court of competent jurisdiction, before the
8 later of—

9 “(1) the end of the 2-year period beginning on
10 the date of the occurrence of the violation involved;
11 or

12 “(2) in any case in which any credit repair or-
13 ganization has materially and willfully misrepre-
14 sented any information which—

15 “(A) the credit repair organization is re-
16 quired, by any provision of this title, to disclose
17 to any consumer; and

18 “(B) is material to the establishment of
19 the credit repair organization’s liability to the
20 consumer under this section,

21 the end of the 2-year period beginning on the date
22 of the discovery by the consumer of the misrepresen-
23 tation.

1 **"SEC. 410. ADMINISTRATIVE ENFORCEMENT.**

2 “(a) IN GENERAL.—Compliance with the require-
3 ments imposed under this title with respect to credit repair
4 organizations shall be enforced under the Federal Trade
5 Commission Act by the Federal Trade Commission.

6 “(b) VIOLATIONS OF THIS TITLE TREATED AS VIO-
7 LATIONS OF FEDERAL TRADE COMMISSION ACT.—

8 “(1) IN GENERAL.—For the purpose of the ex-
9 ercise by the Federal Trade Commission of the Fed-
10 eral Trade Commission’s functions and powers
11 under the Federal Trade Commission Act, any viola-
12 tion of any requirement or prohibition imposed
13 under this title with respect to credit repair organi-
14 zations shall constitute an unfair or deceptive act or
15 practice in commerce in violation of section 5(a) of
16 the Federal Trade Commission Act.

17 “(2) ENFORCEMENT AUTHORITY UNDER OTHER
18 LAW.—All functions and powers of the Federal
19 Trade Commission under the Federal Trade Com-
20 mission Act shall be available to the Federal Trade
21 Commission to enforce compliance with this title by
22 any person subject to enforcement by the Federal
23 Trade Commission pursuant to this subsection, in-
24 cluding the power to enforce the provisions of this
25 title in the same manner as if the violation had been
26 a violation of any Federal Trade Commission trade

1 regulation rule, without regard to whether the credit
2 repair organization—

3 “(A) is engaged in commerce; or

4 “(B) meets any other jurisdictional tests in
5 the Federal Trade Commission Act.

6 “(c) STATE ENFORCEMENT OF TITLE.—

7 “(1) IN GENERAL.—The attorney general of
8 any State, or an official or agency designated under
9 the law of any State, may enforce the provisions of
10 this title in Federal or State court.

11 “(2) CIVIL ENFORCEMENT ACTIONS.—Any
12 State may bring a civil action in any Federal or
13 State court to enjoin any violation of this title and
14 to recover damages under this title for consumers
15 who reside in such State.”.

LETTER FROM GARY J. KOHN

LEGISLATIVE COUNSEL, INDEPENDENT BANKERS ASSOCIATION OF AMERICA

MAY 26, 1993

Dear Chairman Riegle,

On Thursday, May 27, the Senate Banking Committee will hold a hearing to consider S. 783, the "Consumer Reporting Reform Act of 1993." The Independent Bankers Association of America (IBAA) requests that you submit this letter as part of the record of the hearing.

At a time when the banking industry is reeling under the crushing weight of regulatory burden, it is not prudent to pass additional legislation which will exacerbate the problem. Many Members of Congress, as well as President Clinton and Federal Reserve Board Chairman Greenspan, have recognized that the regulatory burden is tied to the credit crunch that is costing the Nation the jobs needed to lift the economy.

We believe that, if this bill is enacted, it will actually result in harming consumers by increasing costs and reducing the availability of credit. For example, the bill would place restrictions on the ability of banks to use prescreened lists for marketing purposes. We are concerned that this will force lenders to offer credit without sufficient current information, or to develop alternative procedures to minimize credit risks, thus slowing the lending process. Marketing and credit costs would increase, leading to increased costs to consumers. Banks could be forced to offer products such as credit cards to consumers without the benefit of the most current credit file information on applicants. Combined with the increased reporting burdens and penalties proposed, the end result would likely be that many lenders will decline to participate in extending certain forms of credit altogether.

This bill will further increase the regulatory burden of the Nation's banks. It is another example of Congressional overkill, reaching beyond a problem confined to an isolated segment of an industry. In this case, the problem is one that primarily concerns the activities of the credit bureaus, not those of the lenders.

Even with respect to credit bureaus, it no longer seems necessary to pass legislation. The credit bureaus recently announced a program of voluntary compliance, implementing most of the measures that were part of last year's House version of this legislation.

Because community banks depend on accurate credit reports in making lending decisions, we support the efforts of the credit reporting industry to improve the accuracy and security of credit reports. In light of this self-imposed solution, as well as in recognition that banks are not the source of the problem and that consumers would be hurt rather than helped by this bill, we urge the Committee to abandon this legislative effort.

POSITION OF MARK WILLIAM HANNA

PRESIDENT, NATIONAL CREDIT INFORMATION NETWORK

Mr. Chairman and Members of the Committee. I am Mark Hanna, President of the National Credit Information Network, a division of W.D.I.A. Corporation. We are commonly known as the reseller who was fraudulently induced into providing the computer access to McGraw-Hill, Business Week Magazine that allowed their editor to pull the credit report of then Vice President, Dan Quayle, as well as several other prominent individuals.

I would like to assess how well the proposed legislation, S. 783, will address the issues of accuracy and privacy in the credit reporting industry, as well as its probable impact on the credit reporting industry, consumers and the enforcement of State consumer protection laws. In addition, I would like to indicate a number of points of concern about provisions in this bill.

A Point Worth Noting

The point should be made that our position will in the vast majority of instances be in total agreement with that of the Associated Credit Bureaus, Inc. and many of our positions are identical both in EXACT WORDING and concept to that as presented by Barry Connelly, on May 27, 1993. However, we are not represented by ACB and do have some major differences, which we feel should be illuminated. We will make a NOTE above the paragraph where our position differs from that of the ACB. ACB spent a great deal of time preparing their position, and in the cases where our positions are identical, we have used their elegant wording.

As we are all aware, the current environment in which American companies conduct their business is different from that of several years ago. In today's economy, a tremendous importance is placed upon information systems and accurate data. Nowhere is that more obvious than in the credit reporting industry. In fact, the present marketplace is driven by competition, as to which company can deliver the most complete and accurate information in the least amount of time. Resellers of credit information have become a part of that marketplace. They provide a method where a business can come to one source to find many different types and sources of information.

It is against this backdrop of constantly increasing demand for complete and easily accessible consumer data that heightened consumer concerns exist in regard to personal privacy and security of information. Our industry is extremely sensitive to this seemingly paradoxical situation.

We appreciate the Committee's interest in this issue and specifically applaud the leadership shown by Chairman Riegle, Senator Bryan, and Senator Bond. We are encouraged by this Committee's willingness to address these complicated, complex and challenging privacy and accuracy issues. Likewise, we would like to use this opportunity to discuss our industry's ongoing commitment to maintaining the delicate balance between the legitimate information needs of business and the consumers' rights to privacy. We consider this type of meaningful dialogue worthwhile to our many efforts.

The credit reporting industry is moving voluntarily to change industry procedures to improve service to consumers.

It may be argued that several of these procedures were imposed by the FTC on one or more of the BIG THREE credit reporting companies, which operate nationally or by agreements with State Attorneys General. Others might say that these initiatives were inspired by the possibility of legislation in the last Congress and before. Obviously, we do not function in a vacuum, and past legislative and regulatory actions played a role in motivating our actions.

To those who have been involved for the last several years in the discussions about FCRA reform, one fact is indisputable—our industry has shown a strong willingness to review and scrutinize their operating policies and procedures. Nowhere is that more obvious than in industry efforts to achieve the highest possible standards of accuracy, consumer service and privacy.

I would like to mention that our credit bureau feels that consumer service is an extremely important aspect of our business. Our commitment to the consumer is not new. It is an integral part of how we conduct our business, whether in regard to the accuracy of our file information, or to the protection of those files. We do not think one can discuss accuracy and privacy without also including consumer services.

Accurate data reflects the quality and value of the credit reporting industry's product. It is the basic foundation upon which credit reports are built. Without reporting accuracy, our product loses its commercial value. The goal is to provide credit reports which are free of any errors. Credit bureaus must offer a product of the highest quality.

The information contained in a credit report depends on three sources for its quality and accuracy: the consumer, the credit grantor and the reporting agency. It is very important for us to educate consumers about their role in improving the accuracy of credit information. They must provide consistent and complete information on applications for credit which are used for setting up accounts. Whether I put Mark Hanna, Mark W. Hanna, or Mark William Hanna can make the difference between three files or one file. If I use my social security number on all three forms, the computer can determine that it is the same person. But I, the consumer, can determine in many cases whether the credit bureau receives accurate and complete information for my file.

The second member of the partnership is the credit grantor. The industry has been working hard to develop more consistent reporting practices in conjunction with credit grantors. The major repositories have been working to develop improved analytical capabilities, so that they can deal with various identities of consumers. The Associated Credit Bureaus have set up a number of task force groups to address the question of accuracy from several perspectives. I feel very positive about the progress these groups are making.

A Point Worth Noting

I urge Congress, if new law is written, to include provisions which would require those who furnish credit data to identify consumer credit accounts which have been closed by the consumer, so that we can include that on the credit report.

Turning now to consumer relations, it is the industry's goal to provide to the consumer quality service, whether seeking disclosure or reinvestigations of information contained in their credit reports.

ACB's new consumer initiatives booklet clearly states: "Credit bureaus believe that there should be no impediments to consumers in obtaining and understanding their credit reports. Credit reports should be available in a format which is clear, concise and easy to read. Disclosure and reverification should also take place in a timely manner."

NCI wholeheartedly supports the new consumer initiatives.

The industry is continuing to work on the development of "consumer friendly" disclosure formats to enhance consumer understanding. We will encourage credit grantors to provide consumers with clear and understandable reasons for credit denial. Within three business days after being contacted by a consumer, a credit bureau will respond by mail to requests for disclosure of the credit file. Credit bureaus will not charge more than \$8 to a consumer who requests disclosure, but has not been denied credit. Under the FCRA, a consumer is entitled to request and receive a free report within 30 days after being denied credit by a credit grantor. It is our policy to extend this period to 60 days following adverse action to give consumers every reasonable opportunity to obtain a copy of their report.

Mr. Chairman, the credit bureau industry will intensify existing efforts—working together with data furnishers and consumers—to provide timely and meaningful disclosure of information, file review and resolution of consumer questions and disputes. Our industry is committed to continuing to improve the access and ease of access to consumer service.

This leads me to the third category of major concern to consumer reporting agencies—privacy. We regard the information we collect as highly confidential. We will not tolerate any unauthorized access of information in our files. In those instances where we have become aware of impermissible access of the data, we have informed the appropriate authorities and urged that they prosecute those individuals or companies to the fullest extent of the law. As custodians of this very sensitive and personal credit data, maintaining the privacy of that information is of utmost concern to ACB members. As part of our new initiatives, we have implemented a number of policies to improve the security of file information.

A Point Worth Noting

I strongly urge Congress in writing any new law to include appropriate punitive provisions to be levied against any person or business who willfully accesses a person's consumer credit file, without a lawful permissible purpose.

We strongly reaffirm our policy that a consumer's medical history will not be gathered or provided in reports for credit or employment purposes. To avoid army confusion, we have reaffirmed this policy in our initiatives to reiterate that we do not have any medical health data about the consumer in the file. Some have expressed concern that medical health information is compiled and included in credit reports. It is not.

The industry has tightened the strict procedures regarding service to brokers and resellers of our information. We have established opt-out procedures on an industry-wide basis to accommodate consumers who choose not to be included on prescreening and direct marketing mailing lists. We encourage stricter enforcement of the Fair Credit Reporting Act provisions regarding those, who through fraudulent actions, violate the permissible purposes section of the act. We are talking about theft. Unauthorized and illegal access should be treated accordingly.

These are but a few of the areas where the credit reporting industry has taken great strides to ensure privacy. Others are discussed in more detail later in this document.

Now I would like to address the specifics of S. 783 in comparison with the standards we have adopted.

ACCURACY

The Bryan/Bond/Riegle bill amends the FCRA in several ways involving the accuracy of credit reporting information. Sec. 104 deals with obsolete information and information contained in consumer reports. Sec. 107 deals with the disputed accuracy of information in a consumer's file, and Sec. 111 deals with the duties of furnishers of information.

The proposed amendments in Sec. 104 (obsolete information):

S. 783: require the use of bankruptcy chapters on a consumer's report.

ACB policy: Credit bureaus will report the specific chapter (either 7 or 13) of Title XI bankruptcies whenever it is provided by the data supplier. When adding public record information our members are advised to make every effort to obtain and identify the specific chapter of bankruptcy when reviewing public record information. ACB members have always drawn a distinction between Chapter 7 and Chapter 13 bankruptcies. Completed Chapter 13's are deleted in 7 years, rather than 10 permitted by law.

NCI concurs with the ACB on the above.

S. 783: require the voluntary closure of an account by a consumer be shown.

ACB policy: Credit bureaus will report accounts as "closed by the consumer" whenever indicated by the data furnisher or established in a review process with consumers.

NCI concurs with the ACB on the above.

S. 783: require collection accounts be reported no longer than 7 years.

ACB policy: Collection account information remains part of the credit file for no longer than 7 years.

NCI concurs with the ACB on the above.

S. 783: require inclusion of timely and relevant information with a positive impact on a determination of creditworthiness.

ACB position: Although it is obviously well intentioned, we have serious concerns about this provision. We encourage our members to carefully consider all information provided by consumers concerning a dispute of information in their file, but we object to the expansion envisioned in sec. 104(f). This is an area of limited value to the consumer, is punitive to the industry, creates concern about fraud and is subject to abuse by credit clinics. Supplemental data requested by consumers typically include utilities, savings, stocks manual trade, and other information that would not otherwise have been placed on the credit report. This section also creates a large opportunity for credit clinics, credit repair organizations and credit service organizations to erode the integrity of the data base. Also vague is the evaluation of the consumer's information as having a "positive impact on a determination of creditworthiness." Equally important is the way in which this information would be catalogued. We have spent years developing a uniform and systematic computerized "metro tape format" to disseminate information between credit grantor and credit bureau. This provision would add little benefit for most consumers while creating an opportunity for unscrupulous credit service organizations to prey on those of limited economic means that Title II of this bill is intended to help.

NCI concurs with the ACB on the above.

Sec. 107 of the bill addresses consumer disputed concerning the accuracy of information in the credit file. The Section imposes a number of duties for credit bureaus under Sec. 611 of the FCRA:

S. 783: if the completeness or accuracy of any item in a report is disputed, the agency must reinvestigate free of charge and record the current status of the disputed information within 30 days of receiving notice from the consumer. Whoever provided disputed information will be notified of the dispute within 5 business days by the credit reporting agency.

ACB policy: Credit bureaus will verify any data in their file within 30 days after being contacted by a consumer. Any information not verified or updated by a credit grantor within 30 days will be deleted from the consumer's credit file. Consumers will not be charged for any verification of existing credit information.

NCI concurs with the ACB on the above.

S. 783: if a dispute is reasonably determined to be frivolous or irrelevant and the reinvestigation is terminated, the agency must make written notification to the consumer of that determination within 5 business days.

ACB policy: Consumers will be notified by mail within 5 business days if a dispute is determined to be frivolous or irrelevant, along with the reasons for that conclusion.

NCI concurs with the ACB on the above.

S. 783: if a reinvestigation of disputed information occurs, the reporting agency must review and consider all relevant information submitted by the consumer.

ACB policy: Credit bureaus will consider relevant written information from consumers during the reinvestigation process and make appropriate changes to the credit file.

NCI concurs with the ACB on the above.

S. 783: if information is found to be incomplete, inaccurate or cannot be verified, it must be promptly deleted. If deleted, prior to reinsertion it must be certified complete and accurate by the furnisher. Notice must be mailed to the consumer within 5 business days of (sic) deletion. An agency must maintain reasonable procedures to prevent the reappearance of deleted information in a file.

ACB policy: As stated earlier, unverifiable information in dispute will be deleted at the end of the 30-day period. Information which is deleted from the credit file will not be reinserted unless the credit grantor verifies it is complete and accurate. In the event the grantor does verify the information's accuracy, the consumer will be notified that the information has been reinserted in the credit file.

NCI concurs with the ACB on the above.

S. 783: within 5 business days after completing reinvestigation, the agency must mail written notification of the results, including a statement that it is completed, a revised copy of the consumer's report based on the file after reinvestigation, and indication of the changes made, a notice that on request, the consumer can get a description of the procedure used by the agency including names, addresses and telephone numbers of anyone contacted, a summary of the consumer's rights under FCRA, and notice of the right to add a statement to his file disputing the accuracy or completeness of the information.

ACB policy: Consumers will be notified by mail no later than 5 business days after their reinvestigation has been completed. Consumers are entitled to add a statement of 100 words or less regarding any disputed entry on their credit report. This statement, or its substance, will be transmitted at the consumer's request to all creditors who previously received the consumer's report.

NCI concurs with the ACB on the above.

Sec. 108 of S. 783 amends the FCRA section relating to charges of disclosure. This amendment would:

S. 783: require each consumer reporting agency to make disclosure as provided in Sec. 609, disputed information, at no charge to the consumer, if it is requested within 60 days of notice, that the consumer's credit rating may be, or has been, adversely affected. Also, in cases of disputed information, no charge may be imposed for a copy of the reinvestigation results, or for notifying a person designated by the consumer to receive notice of those results if specified to CPA within the 30-day period. The consumer may receive a free report after written request within one year from the date of notification of the reinvestigation results.

ACB policy: Upon request made within 60 days of denial, credit bureaus will give consumers a free copy of their credit report. Our position is that there should be no confusion by consumers as to why they were denied credit. The credit bureaus are working to develop credit reports which are easier for consumers to read and understand. ACB policy is to extend the period for providing consumers a free report to 60 days, not the 30 days provided by law. Also, consumers may request a free copy of the credit report from all three National credit reporting systems; this goes beyond the provisions of FCRA which entitle consumers to a free disclosure from the credit bureau which issued the report that contributed to the credit denial.

NCI concurs with the ACB on the above.

In Sec. 111 the bill inserts a new section of the FCRA establishing duties for furnishers of information to consumer reporting agencies. This section creates for the furnishers of credit data a disincentive to provide information regarding consumers. To create substantial compliance obligations and to impose major civil and administrative liability for providing information that someone "should know" is incomplete or inaccurate puts a burden on credit information furnishers that is unreasonable.

Section 111 of S. 783, responsibilities on credit grantors, as they furnish information to consumer credit reporting companies, is a punitive provision, when coupled with the civil penalties, enforcement authority granted to the Attorneys General and private rights of action. It is a litigator's dream come true that, if passed, could have the effect of closing down the free flow of consumer credit information, which allows our credit economy to flourish in a manner unmatched by any country. We know that credit grantors have spoken forcefully on this subject in their testimony, and ACB supports their position.

Credit grantors should be applauded for furnishing information and encouraged to do so, not discouraged. It is the availability of that information in the credit bureau file that sells goods and creates jobs. It is that information that allows a consumer in Nevada to buy a car made in Michigan with one visit to an automobile dealership. Those credit purchases translate into jobs, and whatever the Congress does in the name of accuracy or privacy to discourage that kind of commerce will only hurt your constituents more than help them.

Credit grantors expect to be responsible for correcting any erroneous information which human error and millions of characters data can cause. But the system and the law should give them an opportunity to correct an error without the penalty of fine or costly litigation. A willful violation or failure to correct an error after reasonable notice, would create a more reasonable standard of liability without destroying the free flow of credit history information, which provides the life blood to our credit economy.

NCI concurs with the ACB on the above.

PRIVACY

Credit bureaus are the custodians of very sensitive, personal credit data. Protecting the privacy of that information is of the utmost concern to our members. In our continuous efforts to improve security, credit bureaus are implementing a number of new policies and reviewing procedures to enhance consumer privacy.

First, let me point out that ACB and NCI have advocated giving both the consumer and the credit bureau a cause of action when personal credit information is illegally accessed. We believe any individual or company which obtains credit report information under false pretenses should be prosecuted to the fullest extent of the law. I can assure you that we will continue to cooperate with the appropriate State and Federal authorities to achieve this objective. In the now famous Business Week cover story, in which Dan Quayle's credit report was illegally obtained, efforts were made by NCI to have an investigation launched by government, which should have resulted in the prosecution of McGraw-Hill, Business Week, and the persons involved in the scheme to illegally obtain the reports. No government agency contacted would pursue the case. In fact instead of seeking prosecution of the party responsible, the Federal Trade Commission launched an investigation in the fall of 1989 against NCI, the credit bureau whose information was illegally obtained. This investigation resulted in an administrative hearing being scheduled for sometime early 1994.

Now let's assess the provision of S. 783, as they relate to privacy. A number of Sections in the bill contain new duties and compliance procedures for credit bureaus, as well as the credit grantors and data furnishers. Sec. 102 amends the permissible purposes section of FCRA. It would require:

S. 783: that the report be provided only for a legitimate business need for a transaction initiated by the consumer, or for a direct marketing transaction not prohibited under the opt-out provisions contained in this bill.

ACB policy: Credit bureau contracts with users certify to a permissible purpose. Credit bureaus are advised to require written permission of the consumer, when there is any doubt about the user having a permissible purpose to obtain a report. The ACB policy initiatives provide the consumer with the ability to opt-out of credit and marketing lists. By contacting any one of the three systems, a consumer's name will not be provided for any prescreened or direct marketing mailing lists prepared by the three National credit reporting systems.

NCI concurs with the ACB on the above.

S. 783: if a consumer report is used for employment purposes, a credit bureau provides a summary of FCRA rights to the consumer and obtains certification from the user that the information in the report will not be used in violation of Federal or State equal employment opportunity law or regulation, and the user has disclosed to current and prospective employees that a consumer report may be used and has received written authorization before getting the report.

ACB policy: Credit bureaus require all users to indicate when reports are sought for employment purposes. Credit bureaus will issue reports for employment purposes only, if the user certifies by contract, that the applicant will be given advance notice that a report may be requested. Violations of this contractual obligation subject an impermissible user to cancellation of service.

A Point Worth Noting

NCI position: NCI would like Congress to consider giving the credit bureaus the right in the above instance to initiate a punitive action against the user, investigated by a governmental authority and prosecutable by a Federal Court that investigation warrants such. It should be noted that NCI strongly urges Congress to avoid giving any administrative branch of government the power to both investigate and be judge and jury on the same case. This currently is the case with the Federal Trade Commission and the FCRA.

S.783: before taking adverse employment action based on a consumer report, the user must provide to the consumer a copy of the report, a description of FCRA rights and a reasonable opportunity to respond.

ACB policy: Credit bureaus support and encourage the practice of employers disclosing report information to prospective or current employees, so they can verify the information prior to the employment decision. ACB members do not support the bill provision that would require the employer to provide the consumer with a copy of the report. Disclosure of the actual copy of the report should be made by the credit bureau to the consumer. Normally, the consumer disclosure report is more readable and understandable than the computer format that may be used by the employer. ACB members are also very concerned about the requirement that suggests that the employment decision be delayed, while the consumer disputes any information. This is an unreasonable expectation, when other factors besides the credit report would contribute to the decision to hire one person over another.

A Point Worth Noting

NCI position: NCI agrees with the ACB on the above, with the following exception. NCI believes the bill's provision requiring an employer to provide a copy of the report, be modified to specifically allow the employer at his discretion to provide a copy of the report, when providing a notice of denial. This just makes it easier on the consumer if it is provided. However, if the employer is uncomfortable with providing a copy of the report, then a notice providing clear wording explaining how to obtain a copy should be required.

S.783: a user of a consumer report to be able to disclose the contents to the consumer, if adverse action is taken or contemplated, based on report information.

ACB policy: Credit bureaus will not prohibit banks, stores and other credit grantors from discussing adverse information in the credit report with consumers. Credit grantors will not be prohibited from sharing the adverse credit report data with consumers in order to explain the reasons for their credit decisions. However, we believe the most complete consumer disclosure can best be provided by the credit bureau which issued the credit report.

NCI concurs with the ACB on the above.

The prescreening provisions of S.783 are addressed in Sec. 103 of the bill. These are amendments to Sec. 604 of FCRA, "permissible purposes of reports."

S.783: a consumer reporting agency may furnish a report in connection with a solicitation for credit or insurance not initiated by the consumer, if the consumer authorizes the agency or a firm offer is made and the consumer has not elected to be excluded from the list used or solicitation. Only the consumer's name and address and information that is not identified with the consumer can be furnished. No record of inquiries resulting from unsolicited credit or insurance transaction can be given as part of the consumer's file, except as part of disclosure to the consumer.

ACB policy: Consumers will be able to use an industry-wide system to opt-out of having information about them provided for credit marketing purposes. Prescreening inquiries are not listed on credit reports sold to credit grantors. However, those inquiries will be included in a credit report provided to consumers so they will know who had access to their credit file for at least the last six months.

NCI concurs with the ACB on the above.

S.783: a consumer reporting agency may not furnish a report for a direct marketing transaction, if the report includes information other than the name and address of the consumer, or if the report includes information identified with the consumer, or if the consumer has objected to that use by writing or by calling a toll-free numbers up for that purpose by the three Nationwide agencies.

ACB policy: Credit bureaus that provide marketing lists do not include information about the consumer's credit history and the list is limited to name and address. The lists are subject to the industry opt-out service which is intended to allow consumers who object to inclusion in direct marketing lists to exercise the options of being excluded from these lists. Credit bureaus want to make it easier for consumers to avail themselves of our procedures designed to protect the consumers privacy. To help consumers be more knowledgeable, ACB will annually notify consumers through paid nationally circulated message that they can opt-out, for have their name removed, from prescreened credit offers and direct marketing offers. Consumers may contact any of the three national credit reporting systems to make this election. By contacting any one of the three systems, a consumer's name will not be provided for any prescreened or direct marketing mailing lists prepared by the three national credit reporting systems.

NCI concurs with the ACB on the above.

The amendments relating to compliance procedures contained in Sec. 105 create new responsibilities for resellers of consumer reports regarding consumer privacy.

S.783: a consumer reporting agency must obtain from a reseller the identity of the ultimate end-user of the report and each permissible purpose for which the end-user is furnished the report. The person who gets the report in order to resell it must establish reasonable procedures to ensure the report is resold only for a permissible purpose by identifying the prospective user and the permissible purpose, by certifying the report will be used for no other purpose, and before reselling the reports, by making reasonable efforts to verify these identifications and certifications.

ACB policy: Credit reports will not be sold to resellers or brokers of credit information unless they certify the individual or business requesting the report has a permissible purpose for doing so, as defined by law. In other words, third party sellers of credit reports will be required to follow the same procedures as credit reporting companies regarding permissible purposes of all users to whom information is communicated. Resellers are credit reporting agencies. A reseller or broker must sign a contract to gain access to the credit reporting system. Customers of the broker or reseller must also agree contractually with the broker/reseller that they will only access reports for permissible purposes, as defined by law. Before providing service to the broker or reseller, the credit bureau must fully investigate their qualifications, including an on-site visit of the broker's premises. Additionally, the credit bureau must be certain the broker understands and contractually agrees to comply with all the provisions of the FCRA, especially Sec. 604, the permissible purposes provisions. The reseller is required to follow the same procedures in qualifying those who apply for its services. Finally, periodic audits of both the broker and the customers of the broker must be conducted by the credit reporting agency to ensure that all parties are abiding by the terms of the contract.

A Point Worth Noting

NCI position: Resellers offer American business alternate choices. The credit reporting industry is currently dominated by only 3 GIANTS. Resellers should be required to maintain data audit trails, which should enable them for a period of three years from the date a report is accessed from any other credit bureau be able on a case by case basis within a maximum of 24 hours, be able to supply the name, address, phone number of the end user of the consumers report, together with the purported permissible purpose for which such report was accessed.

To require resellers to turn over ALL names, addresses and phone numbers of their clients to another credit bureau gives the supplying credit bureau an absolute MONOPOLISTIC and UNFAIR business advantage. Nothing would prevent the supplying credit bureau from soliciting the client of the reseller directly. The GIANTS within the industry already have a strangle hold over the credit industry. Smaller credit bureaus such as NCI cannot obtain access to the credit data from the major credit grantors, such as Visa, Mastercard, General Motors, etc. Granting the BIG THREE the unrestricted legal access to the names, addresses, and phone numbers of resellers will effectively put them at such a disadvantage that resellers will soon be a thing of the past. American business benefit when they have more than one choice for the purchase of any product or service.

A Point Worth Noting

Some resellers such as NCI create a NEW and ENHANCED REPORT, using data purchased from one or more of the BIG THREE, ALONG with data owned and compiled by the reseller. NCI strongly urges Congress to include in any new law specific provisions which would prohibit any credit bureau from specifically, through contract or otherwise restricting any other credit reporting agency from selling information purchased from another credit bureau, whether in its exact form or whether the information is combined creating a new report, such as a mortgage report, from being sold within the law to any legitimate end user having a legitimate permissible purpose for such report. A combined or enhanced report should be considered a new report, and the consumer credit reporting agency who created the new report should then be liable for the complete and total accuracy of the report, just as with any other credit report.

NCI agrees credit reports should not be sold to resellers or brokers of credit information unless they certify the individual or business requesting the report has a permissible purpose for doing so, as defined by law. In other words, third party sellers of credit reports will be required to follow the same procedures as credit report-

ing companies regarding permissible purposes of all users to whom information is communicated. Resellers are credit reporting agencies. A reseller or broker must sign a contract to gain access to the credit reporting system. Customers of the broker or reseller must also agree contractually with the broker/reseller that they will only access reports for permissible purposes as defined by law. Before providing service to the broker or reseller, the credit bureau must fully investigate their qualifications, including an on-site visit of the broker's premises. Additionally, the credit bureau must be certain the broker understands and contractually agrees to comply with all the provisions of the FCRA, especially Sec. 604, the permissible purposes provisions. The reseller is required to follow the same procedures in qualifying those who apply for its services.

Mr. Chairman, those are the provisions of the Bryan/Bond/Riegle bill which NCI has identified as specifically addressing matters of accuracy and privacy in consumer reports. We think it is evident that industry policy and initiatives respond vigorously to most of the concerns addressed in S. 783.

NCI supports new legislation. The resellers position within the industry needs to be preserved within this legislation in order to protect healthy business competition.

Will S. 783 have an impact on the credit reporting industry if enacted? The answer is yes. But it will not necessarily be a positive impact. Several provisions will have a more significant and costly impact on the credit grantors with whom we do business. The result could be higher costs for credit reporting, and costs will be passed on eventually to the consumer. It is quite possible that many credit grantors will choose to exclude those who are marginal credit risks from credit opportunities, rather than deal with the new liabilities established by this bill.

We must express caution to those who would seek to place additional restrictions, liabilities and burdens upon our industry. Governors of the Federal Reserve Board have expressed concerns about the cumulative effect regulations and restrictions have on the viability of the banking system and the availability of consumer credit.

Under this bill, the multitude of problems that face the credit industry range from the question of compliance with credit laws and interpretations in 50 States, to the imposition of major civil and administrative liability for the hundreds of thousands of creditors who furnish credit data to the credit reporting agencies each month.

Another totally unexpected result could be that the accuracy of our credit files could be adversely affected. Furnishers of data might reasonably react to these new obligations and liabilities by reducing the amount of information provided to credit reporting agencies, so as to reduce their legal exposure. While the information in the consumer's file would be complete technically, it may be substantively incomplete, thereby causing the credit grantor to be unable to make a determination of creditworthiness that would benefit the consumer.

Attempting to identify more precisely the impact this legislation would have on consumers and the credit reporting industry is somewhat like asking the Treasury Department what the impact of a VAT would be on the economy. We know there will be one, but how big or how small, who will benefit or who will suffer, are questions which depend on judgmental decisions and are almost impossible to quantify.

The question of enforcement of State consumer protection laws which you asked me to discuss, raises another difficult issue for our industry. NCI supports strict compliance with the Fair Credit Reporting Act and we endorse the actions of authorities to enforce more strictly the FCRA provisions regarding those who violate by fraud the permissible purposes section of the Act. This is not an endorsement of the broader authority for State actions proposed by this bill.

We feel that uniformity in Federal credit reporting laws would not preempt the prerogative of State regulators and law enforcement officers. In 20 States there are laws of various degree regulating the credit reporting industry. Most of those laws are simply the current FCRA provisions in State language. But this means that there are 30 States which do not have such laws. Very few of the 20 State credit reporting statutes are more comprehensive than the Federal law. While the various State legislators are in session, we are seeing new proposals weekly. Somewhere between 150 and 200 bills affecting the credit reporting industry have been introduced by State legislators since the beginning of this year.

These bills may be well-intentioned, but what is important is how many of these provisions are redundant vis-a-vis Federal law, and how many of them are different enough to require additional forms or actions by reporting agencies or credits grantors? The cost versus the benefit to the consumer is something that I ask you and your colleagues to weigh. We are already in compliance with the Federal law in all 50 States. What we are concerned about is the cost of different levels or forms of compliance in 50 States that creates an unreasonable financial burden for the

credit reporting industry. Also, different laws create different degrees of enforcement. In the end, the consumer is not well served.

We believe that uniformity is a pro-consumer position. It would result in more and stronger enforcement of the FCRA. NCI together with the industry supports Federal preemption of additional and extraneous State laws and believe that the failure to include preemption in S.783 is a major flaw in the bill. The Federal FCRA and our newly adopted credit reporting industry initiatives offer more consumer protection provisions than almost any State credit reporting law currently on the books.

Ours is an industry deeply involved in interstate commerce. Numerous provisions in this bill make references to credit reporting agencies operating on a nationwide basis. Yet our members are still subjected to having to meet requirements on a State-by-State basis, which adds to the costs of serving the consumer. Any one of us in this room probably can pull out several credit cards issued from different States. A card issued in Baltimore may have a service center in Delaware or an Atlanta card issuer may be serviced in Florida. Credit extension is an interstate business. The safety and soundness of the banking system requires uniformity in information processing.

A tougher FCRA does not become the ceiling for compliance. In numerous instances, NCI policies are providing more protection for the consumers' privacy than the law requires. We are doing more to ensure the accuracy of our files and better service and access to consumers than is required under FCRA. We are not asking for a lessening of our responsibilities. We are asking for consistent treatment under the law. I think there is agreement among all parties in the credit industry—credit bureaus, credit grantors, credit data furnishers—that there is a compelling need for uniformity. As a consumer, I can say that I would feel better knowing that the laws in Ohio, Kentucky, and Indiana all provide me with the same rights and protection. It is hard enough to educate the consumer as to their rights under the FCRA. Fifty different State laws could make this task almost impossible.

There are numerous other points I could make regarding this issue. We could talk about the problems of our mobile society, different standards for collection or reinvestigation, the increased costs for monitoring and compliance with a multitude of regulations and laws, but when we get to the bottom line, what additional benefit to the consumer is provided by not having a uniform Federal law? Uniformity will permit credit bureaus to respond consistently to disputes, inquiries, reinvestigations and disclosures. The changes in the past twenty years in our industry have also impacted our society. Consumers today deserve to know that the procedures we will follow will be the same wherever they live, shop, travel or seek employment. Any FCRA reform should contain a provision to bring uniformity to Federal and State credit reporting laws.

Another matter which reappears with regularity is a proposal that credit bureaus be required to provide annually a free disclosure upon request to consumers who have not been denied credit, but who wish to review their file. We strongly oppose this proposal for several reasons, not the least of which is the dangerous precedent established by Congress requiring a private business to give away its product. The decision to provide a "free" anything is a marketplace decision that should be left up to the management of each business.

We cannot emphasize strongly enough the negative impact such an edict would have on all credit bureau businesses in your State. You are not only affecting three multimillion-dollar corporations. NCI is a small, highly automated business. We have less than 10 full time employees. You are impacting the bottom line of small businessmen and women in Hyannis, Massachusetts, and Ironwood, Michigan. Nevertheless, even these businesses are limited to charging no more than \$8 for a disclosure under ACB policy.

The small businesses are pleased to see that the bill supported by you and your colleagues does not require them to give away their product free of charge. NCI policy, consistent with the law, calls for free disclosure after an adverse action based on information in the consumer report. We go beyond the law in providing for free disclosure after denial and upon request.

The argument that consumers should not have to pay for information about themselves is invalid. The business expense of collecting, verifying, storing and protecting this information is legitimate and quite significant. The precedents for paying a fee to retrieve personal information are clearly established by Federal, State and local government entities as well as private enterprises: motor vehicle records, college transcripts, birth, marriage and death certificates, U.S. census data copies—all of these require you to pay a fee for access to your own personal information.

We are attempting to balance the consumer's right to access the credit file with the consumer's desire to access that file. NCI feels that its policies provide that balance while protecting the consumer's ability to review the credit information. Again,

we applaud the decision of the committee to exclude the "free report" provision and urge you to oppose any effort to add this as an amendment.

Consistent with our opposition to a legislative mandate that a business give away its product, our members oppose the legislative mandate of providing toll-free telephone service. How, where, and when to provide toll-free access to a company should be an individual company marketplace decision.

Therefore, NCI opposes all references to mandating toll-free numbers in S.783, but consistent with NCI's policy of providing consumers with unimpeded access to verify information in their reports, NCI has for many years offered toll-free numbers for consumers at various stages of the reinvestigation or disclosure process.

If the consumer has had the opportunity to review information in the report, it is easier to speak about the disputed information and attempt to resolve the dispute. Also, it is easy to imagine the confusion that could result from consumers calling the toll-free number for a variety of purposes, none of which related to the purpose intended in this bill.

NCI does not support the mandatory establishment of toll-free number as part of the "opt-out" provision in Sec. 103. This notification process creates a two-step system which is burdensome for both the credit reporting system and the consumer. The notification system that is the most direct and the least likely to result in confusion or errors is a written notice from the consumer. The industry suggests that we be allowed to find out what is best for the consumer in this regard rather than mandate another expense.

NCI also objects to the FTC civil penalty authority granted in Sec. 113. Under current law, the FTC has the authority to issue consent orders and agreements to ensure compliance. For more than 20 years this has been an effective means of enforcement as evidenced by the FTC agreements with some of our members and the incorporation of many points from these agreements in several industry policies.

Civil penalty authority usually leads to higher business costs, but little additional benefit to the consumer. The result is much the same, as can be achieved from use of a consent decree. Since cost frequently becomes the determining factor rather than truth, firms will pay the penalty rather than litigate. The FTC civil penalty authority is overkill and has no measurable benefit in enforcing the FCRA.

Please consider any new legislation very carefully, credit availability depends on consumer credit reporting and the American economy would surely collapse without readily and easily available consumer credit.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO FROM DAVID MEDINE

Q.1. Mr. Medine,¹ I would like your expert opinion on a question that I have regarding another title of the Consumer Protection Act, and that is Title 8, commonly known as Fair Debt Collection Practices Act. Specifically, my question pertains to Section 807(11) of that Act, which requires collection agencies to provide a notice of their debt collection purpose in communications with debtors.

a. Is it still the FTC staff's interpretation of the Act that this notice of purpose should not be required in each communication by the collection agency?

b. I would like to hear your views on whether the law should require that the debt collection proviso only be required in the initial written contact with the debtor?

c. The FTC's last two Annual Reports to Congress requested Congressional clarification on this issue. Please provide the FTC's current position on how the split in the Federal Circuit Courts may best be resolved? Does the FTC support not requiring debt-collection purpose disclosure in every written and oral communication with a debtor?

A.1. Section 807 of the Act prohibits debt collectors from making false or misleading representations in connection with the collection of a debt, and sets forth, without limitation, examples of violative conduct. Section 807(11) requires a debt collector "to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose." Several courts have interpreted this section literally, requiring a collector to include this two-part disclosure in each oral and written communication with the indebted consumer, as well as with other third parties whom the collector may lawfully contact.²

The Commission staff disagrees with this interpretation, believing that the language of Section 807(11) should be considered in light of its underlying purpose. Section 807 as a whole is intended to prevent deception by the collector in the course of the collection process. In its informal staff interpretations, staff has consistently argued that, with respect to the consumer, there is little reason to require collectors to convey the second part of this disclosure regarding the intended use of any information the collector obtains. Once a collector contacts a consumer and discloses that he is seeking payment of debt, the intended use of any information the collector seeks should be apparent to the consumer. In addition, staff believes there is little purpose in requiring collectors to reiterate the first part of the disclosure subsequent to that given in the initial contact with the consumer.³ Given that the collection process often involves many contacts over a period of time, repeated disclosures

¹ As with my oral presentation before the Committee, my responses to these questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

² See, e.g., *Pipiles v. Credit Bureau of Lockport*, 886 F.2d 22 (2d Cir. 1989).

³ Section 809 of the Act requires the collector to provide the consumer with a written notice that includes, among other things, the amount of the debt and the name of the creditor to whom the debt is owed. This notice must be provided within five days of the collector's initial contact with the consumer. Thus, a collector who complies with this section necessarily provides the information that the first part of Section 807(11) requires.

of the sort this section requires are at best redundant and may even be viewed as intimidating by the consumer.

With respect to permissible third party contacts other than those made to acquire location information under Section 804, the Commission staff believes that both parts of the disclosure required by Section 807(11) are necessary in the collector's initial communication. For example, a collector who properly contacts a debtor's attorney or spouse should, during the initial contact, disclose his identity as a collector, the reason for the contact, and the intended use of any information that the attorney or spouse may choose to supply. Once again, however, the Commission staff holds the view that no purpose is served in requiring the collector to repeat these disclosures in all subsequent communications.⁴

Two federal appellate courts have issued conflicting opinions on this issue. The Second Circuit Court of Appeals, in affirming a district court opinion, has held that the language of the statute unambiguously requires the notice in 807(11) to be given in all communications made to collect a debt.⁵ However, the Ninth Circuit Court of Appeals has taken a different view and has ruled that requiring a debt collector to make the affirmative disclosures set out in Section 807(11) in every communication with a debtor ignores congressional intent and serves no useful purpose because the debt collection purpose of the communication is clear to the recipient.⁶ The court also found that continued disclosures could be intimidating to the consumer and would impose unnecessary restrictions on ethical collectors.

The fact that two federal appellate courts have considered this matter and have issued opposing rulings has introduced uncertainty with industry regarding the requirements of Section 807(11). In the Commission staff's view, Section 807 of the Act clearly prohibits all deceptive representations in the debt collection process. However, in its present form, Section 807(11) imposes requirements that go beyond the prohibition of false or misleading practices. This legislation was enacted to protect consumers from unfair or deceptive collection practices and not to hamper or unnecessarily burden legitimate collection efforts involving neither unfairness nor deception. In the Commission's last two Annual Reports to Congress pursuant to the Fair Debt Collection Practices Act, this problem was highlighted so that Congress could make any modification, if deemed necessary, regarding the appropriate nature and timing of disclosures to consumers under Section 807(11). The Commission staff's position has not changed.

Q.2. Mr. Medine, the Associated Credit Bureaus announced last week that it made a Freedom of Information Act request for all consumer complaints regarding credit bureaus for the first quarter of 1992. According to the ACB, this request yielded 578 complaints for this time period. This is a rate well below the 10,000 per year pace reported in recent years.

a. Can you comment on the numbers offered by the ACB?

b. Could you explain how the FTC compiles these numbers?

⁴ However, it might be argued that they could be of some value when proper, but infrequent, third party contacts are made.

⁵ *Pipiles v. Credit Bureau of Lockport*, *supra*.

⁶ *Pressley v. Capital Credit and Collection Service, Inc.*, 760 F.2d 922 (9th Cir. 1985).

c. Do you believe that this figure reflects improved operations by the credit bureaus?

A.2. On a number of occasions, the Commission has been asked by Congressional Committees to compile information concerning the number of written and oral consumer complaints and inquiries from consumers concerning credit bureaus and the Fair Credit Reporting Act (FCRA). This information has been provided in Commission testimony on proposed amendments to the FCRA. The Commission compiles this information primarily by obtaining a printout from its computer of the number of complaints and inquiries which were coded as being FCRA related. When letters are received at the Commission, they are regularly coded and that code is entered into the computer.

In its prior testimony,⁷ the Commission has reported that approximately 8,700 FCRA-related consumer complaints and inquiries concerning credit bureaus and the FCRA were received in calendar year 1990. (This figure does not capture telephone calls to the Commission's regional offices.) This represented an increase of about 3,000 over the number received in 1989, or an increase of about fifty percent in a single year. Based on preliminary figures, it appeared that calendar year 1991 reflected another, somewhat smaller, increase in FCRA-related correspondence. By the end of the 1991 fiscal year, for example, the Commission had received 1,200 more written complaints than it had received in calendar year 1990, and it appeared that telephone complaints had increased somewhat as well. However, while consumer complaints and inquiries about FCRA issues exceed those from any other area, we do not know whether this increase in complaints is solely attributable to an increase in inaccuracies or whether it reflects other factors, such as heightened consumer awareness. Likewise, a decrease in the figures would not necessarily translate into improved performance by the credit reporting industry.

On April 13, 1992, the Associated Credit Bureaus, Inc. (ACB), the credit bureau industry's trade organization, filed a Freedom of Information Act (FOIA) request with the Commission seeking copies of all complaints regarding credit bureaus filed with the Commission during the first three months of 1992. They requested that these be compiled using the same methodology used by the Commission in calculating the complaint and inquiry figures referenced above. A number of months later, the Commission's FOIA Branch produced the documents responsive to this request to ACB. While copies of letters with attachments were not stapled together, ACB attempted to reassemble the individual letters with attachments and, on that basis, believes that there were a total of 578 letters produced. ACB's analysis of these suggested that 205 were unrelated to credit bureaus or the FCRA, leaving 373 letters. If extrapolated, based on ACB's figures this would result in an annual rate of 1,492 letters (or 2,312 if the 578 figure is used). ACB never contacted Commission staff for an explanation of this apparent 85 percent decline in consumer complaints and inquiries (which, as noted

⁷ See, e.g., Commission testimony on January 9 and 10, 1992, at field hearings of the Consumer Subcommittee of the Senate Committee on Commerce, Science and Transportation in Las Vegas and Reno, Nevada, respectively, concerning FCRA reform and, specifically, S. 1853, introduced by Senator Richard Bryan.

above, followed several years of constantly increasing numbers of complaints). ACB informed Commission staff of its findings one business day before releasing its results to the public and the press.

After receiving the results of ACB's study, Commission staff has engaged in an inquiry to determine whether the ACB figures are accurate. Unfortunately, we have learned that a number of inadvertent errors occurred in compiling the response to ACB's FOIA request. Based on the Commission's computer records,⁸ the number of consumer complaints and inquiries received in fiscal year 1992 (extrapolating from the first quarter 1992 figures) is approximately 8,000. This would not include hundreds of telephone calls received from consumers nor would it include hundreds of Congressional referrals of consumer inquiries (both of which were included in the Commission's figures reported to Congress in the past). After investigating the disparity in the figures, ACB has been notified by the Commission of the correct figures and the problems which occurred.

The Commission's staff regrets that a number of errors occurred in compiling ACB's FOIA request. Our records suggest that 2,042 letters should have been produced. Our files suggest that ACB may, in fact, have received more than 578 letters, though because individual letters were not stapled and names were blocked out, ACB may legitimately have thought it was receiving fewer letters.

While the Commission uses its consumer complaint files as one of many tools for case generation and investigation, a case would never be brought by the Commission without additional evidence that there was reason to believe that a company was engaged in law violations. Likewise, our legislative proposals are based on what we have learned about the industry from our numerous investigations and law enforcement actions in this area.

I appreciate the opportunity to respond to these questions. Please feel free to contact me if you have any additional questions.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO FROM J. JOSEPH CURRAN, JR.

Q.1. Attorney General Curran, would this legislation be improved if it clearly stated that "credit scores" should be considered part of a consumer's file information for the purposes of the Fair Credit Reporting Act?

A.1. Yes. There are two types of credit scores, past and present. These credit scores are created by the credit reporting agencies, based on analysis of data in the consumer's file. I believe that under current law, past credit scores, that is scores that reflect a consumer's score at a given time in the past when a credit grantor requested the credit information, is part of the consumer's file and that the Fair Credit Reporting Act, therefore, requires their disclosure. Disclosure of past scores will inform the consumer of how he or she was viewed by credit grantors who accessed the consumer's file.

⁸The letters received during the First Quarter of 1992 have been destroyed as part of the Commission's normal document destruction schedule. Therefore, independent verification is not possible.

This legislation would be improved if it clearly stated that the present score is also a part of the consumer's file. Disclosure of the present score is important because it will inform the consumer of his or her current rating based on information in the report at the time of the request. The current score will be particularly relevant in determining how future credit applications may be evaluated by a credit grantor and may highlight the need for the consumer to review closely the information upon which the score was based.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR RIEGLE FROM BARRY CONNELLY

Thank you for the opportunity to respond to the follow-up questions you submitted to Associated Credit Bureaus (ACB) for inclusion in the record of the hearing on S. 783, the Consumer Reporting Reform Act of 1993.

Each of the questions specifically identified activities of two ACB member companies, Equifax and TRW. We shared the questions with representatives from each company and asked that they provide ACB with an appropriate response. Except where noted in question No. 1, the response represents information from the member company. If we can be of any further assistance, please do not hesitate to ask.

Q.1. *Voluntary Steps by TRW, Inc.*—I understand that TRW already offers a free report to consumers on an annual basis. I am interested in how this policy is working.

Q.1.A. Has TRW seen a big surge in credit report requests?

A.1.A. Please keep in mind that TRW decided to introduce voluntarily the complimentary report as a part of a broad-ranging, consumer-oriented education policy. One of the objectives was to provide a tool for the consumer to use in the planning of major credit purchases, such as a home.

TRW considers the data about this program to be proprietary. However, total disclosures rose by 50 percent over previous levels. When first introduced, there was a three- to four-month spike in requests created by unusual attention from the various forms of public news media. That volume has now become steady. TRW views the additional costs, while substantial, as an investment in its overall consumer education strategy. TRW believes that it should remain voluntary and not mandated by law.

Q.1.B. Has TRW advertised the availability of free reports?

A.1.B. Paid advertising is not used as a part of the overall TRW consumer education strategy, but many other avenues of publicizing the complimentary credit report have been utilized. Prior to introduction, news releases describing the "how to" process to get your report, along with the consumer information necessary for identification, were distributed. The press release was widely utilized, and this was augmented by publicity from speeches to consumer groups and other communications.

Today, TRW continues to work with various consumer groups, credit unions, etc., that publicize the consumer service. Additionally, consumers who call TRW's consumer report disclosure number are notified of the complimentary report program and the proce-

dures to apply for that report. Recent press releases, concerning the new "plain English" consumer report, included information concerning the availability of the complimentary report.

A.1. Additional Information from ACB.—ACB members in two small states (Vermont and Maryland) have experienced a significant increase in the number of consumer disclosures as a result of the law in those states requiring the credit bureaus to give a free report, once annually, upon written request. These are small, independently owned credit bureaus, not the three giant nationwide companies. In Maryland a four-person office found the volume of requests for free disclosure and the subsequent time spent on reinvestigations so overwhelming that it was necessary to hire an additional person.

The Committee's interest in the business cost of providing free report disclosure should not be limited to the experience of one large company that views the program as part of its consumer education investment, but should also inquire of the impact such a provision would have on the smaller, independent credit bureaus in each Senator's state.

The Credit Bureau of Winston-Salem, North Carolina, estimated last year that if every consumer in its file exercised a right to a free credit report disclosure, it would cost that merchant-owned credit bureau \$3.5 million per year. While we readily admit that it is unrealistic to expect all consumers to request a free report, it is clear, however, that any percentage of increase would add significant costs to this locally owned business.

This is not an issue that only affects TRW, Equifax and Trans Union. It would prove to be a financial hardship on smaller private credit bureaus in Kingston, New York, or Flint, Michigan, or any other community.

Q.2. Investigative Reports.—Under the Fair Credit Reporting Act, credit bureaus can compile "investigative consumer reports" containing subjective information, such as reputation or lifestyle. Delta Airlines recently hired Equifax to prepare such reports on 7,000 Pan Am employees. The questions violated NY State law and resulted in a suit filed by the NY Attorney General.

Q.2.A. Does existing federal law adequately protect consumers against invasions of privacy involving investigative reports?

Q.2.B. Do consumers have adequate access to these reports to enable them to dispute such subjective information?

A.2. The preamble to the questions contains several errors. There was a concern by the State of New York Attorney General's office that several of the questions asked by Equifax might violate New York State and/or New York City human rights statutes. However, such a determination was never made, and there was never a lawsuit filed. There was an assurance agreement between Equifax and the Office of Attorney General that those certain questions would not be asked in the future.

In our opinion, the answer to both questions is, "Yes." The current FCRA provisions relating to permissible purposes, disclosure, procedures in case of disputed accuracy, restrictions on the use of public record information for employment purposes, restrictions on investigative consumer reports and other provisions combine to

provide consumers with strong privacy protections. Additional protection is provided under Section 606, which in business practice results in a clear pre-notification to a consumer that an investigative consumer report, including information as to character, general reputation, personal characteristics, and mode of living . . . may be made along with a statement informing the consumer of his right to request disclosure. These rights are in addition to the regular rights consumers have for disclosure and dispute resolution under Sections 609, 610, and 611, which apply to all consumer reports, providing access to report information and the ability to dispute and correct inaccurate subjective or objective information.

Q.3. Investigative Reports.—The New York Attorney General is advocating state legislation to prohibit consumer reporting agencies from making inquiries in preparation of an investigative report which, if made by an employer, would constitute an unlawful discriminatory practice under the state's anti-discrimination laws. Is such a measure warranted at the federal level? Why, or why not?

A.3. At the time of the agreement, Equifax implemented a standard information practice that they would not prepare an investigative report for employment purposes if the employer would not otherwise be permitted to prepare such a report for an applicant.

However, in considering whether a federal (or state) legal measure is warranted, we would recommend that consideration be given to a number of issues, including the following:

- Would the requirement apply to situations where the consumer is a prospective employee only, or also to situations where employers are considering existing employees for promotion, reassignment or retention?
- Would other persons than consumer reporting agencies (such as private investigators or temporary agencies) be similarly restricted?
- Would the requirement provide flexibility for employers and vendors to make exceptions to generally prohibited questions when bona fide occupational qualification exceptions exist under Title VII and federal labor laws?
- Would the law provide flexibility for questions designed to accommodate the disabled, to assist in child support and to attain the objectives of affirmative action and diversity programs?
- Would such a requirement provide exceptions for regulations of federal agencies (such as DOT, Defense, FAA, NRC), requiring special questions to be asked by employers or contractors in the interest of public safety or national security?

The answers to these and other questions will be important in determining whether such a measure is warranted. In general, we believe that employers recognize their responsibility for complying with labor laws pertaining to privacy—while at the same time recognize the need to take necessary measures to avoid legal expense for negligent hire or danger to the safety and well-being of their work force or the public. Any changes to existing law should carefully consider whether companies can continue to successfully and legally maintain this balance.

Mr. Chairman, we hope these answers have been responsive to your inquiry, and once again, we appreciate the opportunity to participate.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR RIEGLE FROM ROBERT D. HUNTER

Q.1. Consumers complain that some creditors fail to notify the credit bureaus when they realize or should realize that the information they provide to the credit bureau is wrong. What procedures are currently in place to make sure that such mistakes are corrected?

A.1. The Fair Credit Reporting Act ("FCRA") currently requires that a credit bureau must reinvestigate when a consumer contacts the credit bureau and disputes the accuracy of information in the consumer's file. Pursuant to the reinvestigation obligations set forth in the FCRA, the credit bureau must check with the creditor that originally supplied the disputed information and must inform the creditor of the nature of the consumer's dispute. If the disputed information cannot be verified promptly by the creditor, the information is deleted from the credit bureau's files.

The FCRA reinvestigation requirements have been enhanced by the consent agreements recently entered into by the three major credit bureaus with a number of State Attorneys General and the Federal Trade Commission. In particular, the credit bureaus now are required to adopt even more extensive procedures for correcting information disputed by a consumer, including providing to the consumer an updated version of the consumer's credit report after the reinvestigation has been completed. This ensures that the consumer is able to determine whether the disputed information has been corrected to his or her satisfaction.

Moreover, it is important to note that in providing information to credit bureaus, creditors normally report the status of each loan or account as it appears in their own records. Because this same information is essential for the creditor's collection activities and its other internal purposes, such as addressing customer inquiries and providing reports to regulatory agencies, creditors must maintain accurate records for their own needs. As a result, the procedures in place to provide for the accuracy of a creditor's own records have the added benefit of protecting the accuracy of the information furnished to credit bureaus from those records.

In addition, the Truth-in-Lending Act provides protection to consumers against inaccurate records. When a creditor is notified by a consumer that information reflected on the consumer's monthly billing statement for an open-end credit account is incorrect, the Truth-in-Lending Act requires the creditor to investigate the consumer's claim and, if necessary, to correct the information. Also, until the consumer's claim is resolved, the creditor may not report to a credit bureau or any other third party that the consumer's account is delinquent as a result of the consumer's refusal to pay a disputed portion of the outstanding balance on the credit account.

Q.2. How well does the bill address privacy concerns that have been raised concerning credit reports?

A.2. Privacy concerns regarding credit reports already are adequately addressed under existing provisions of the FCRA. Under section 604 of the FCRA, credit bureaus may not furnish a credit report to anyone unless the recipient of the report has one of the "permissible purposes" enumerated in the statute. This provision is intended to ensure that the privacy rights of consumers with respect to credit reports are protected by permitting access to credit report files only in certain limited circumstances.

In addition, section 607 of the FCRA requires credit bureaus to establish procedures to ensure compliance with the permissible purposes restrictions. Specifically, credit bureaus must require prospective users of credit reports to certify the purposes for which the reports are requested and to certify that the information will be used only for permissible purposes. In addition, section 607 prohibits a credit bureau from furnishing a credit report to any person if the bureau has reasonable grounds for believing that the report will be used for a purpose other than a permissible purpose.

Under section 620 of the FCRA, any officer or employee of a credit bureau who knowingly and willfully provides information from the credit bureau's files to a person who is not authorized to receive it, is subject to criminal penalties. Specifically, a person that commits such a violation may be fined up to \$5,000 and/or imprisoned up to one year. In addition, under section 619 of the FCRA, the person obtaining the information also may be fined up to \$5,000 and/or imprisoned up to one year if the information was obtained knowingly and willfully under false pretenses.

In addition to criminal penalties, the FCRA provides that a credit bureau that fails to comply with the restrictions of the FCRA will be liable for actual damages sustained by a consumer as a result of the failure, attorney's fees and court costs, and, in the case of willful violations, such punitive damages as the court may allow. Moreover, courts have held that a person who improperly obtains a credit report also may be subject to civil liability.

These provisions are adequate to address instances where a consumer's privacy is infringed upon by unauthorized access to the consumer's credit report maintained by a credit bureau.

Q.3. The bill strengthens current law by prohibiting employers from accessing their employee's credit report without obtaining their *general* consent. The House version of this legislation would require *specific* consent each time an employer wants to look at a report. Which provision makes more sense and why?

A.3. The general consent required by S. 783 is far more appropriate than the specific consent which would be required under H.R. 1015. H.R. 1015 would require that, before obtaining a credit report on an employee, an employer must provide the employee a separate written disclosure indicating that a report may be obtained and must obtain the employee's written authorization. This approach simply is unworkable in many instances. For example, many employers obtain consumer reports on current employees who are being considered, but have not applied, for promotions or other employment changes. Similarly, employers may obtain credit reports on employees suspected of fraudulent or other criminal activity. It simply is not practicable to provide advance notice to, and obtain

specific consent from, employees in these contexts. Consequently, H.R. 1015 would, as a practical matter, eliminate or significantly curtail the use of consumer reports for these legitimate employment purposes.

The corresponding provision of S.783 provides for a more balanced approach which would ensure that employees are notified of an employer's practice of obtaining credit reports for employment purposes without unduly restricting the ability of employers to use credit reports for legitimate employment purposes. As a result, the approach taken in S.783 is far more appropriate than that taken in H.R. 1015.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR RIEGLE FROM MICHAEL ALTIER

This is in response to Chairman Donald W. Riegle's letter to Michael Altier, General Counsel of the National Retail Federation, dated June 7, 1993, submitting three questions for response by NRF's witness at the recent hearings on S.783.

Q.1. Credit Provider Procedures.—Consumers complain that some creditors fail to notify the credit bureaus when they realize or should realize that the information they provide to the credit bureau is wrong. What procedures are currently in place to make sure that such mistakes are corrected?

A.1. Creditors have established procedures to notify credit bureaus when there is reason to believe that the information they provide to credit bureaus is inaccurate or the information is deemed to be correct by the creditor but is disputed by the consumer. This is required by existing federal law for all open-end creditors. Specifically, Regulation Z, which implements the Truth-in-Lending Act, provides that if a consumer withholds payment on a credit card account because of a dispute over the quality of goods or services purchased with a credit card, the card issuer is prohibited from reporting the account as delinquent until the dispute is settled or judgment is rendered. 12 C.F.R. §226.12(c)(2).

In addition to disputes over the quality of goods or services, the same rule applies to any dispute over an amount shown on the customer's bill. That is, a creditor or its agent is prohibited from making or threatening to make an adverse report to any person about the consumer's credit standing, or report that an amount is delinquent, because the consumer failed to pay any amount disputed by the consumer pursuant to the Fair Credit Billing Act. 12 C.F.R. §226.13(d)(2). If a consumer disputes any information on his or her billing statement, federal law requires that the creditor acknowledge the dispute within 30 days and conduct a reasonable investigation within two billing cycles. If there has been a billing error, the creditor must credit the consumer's account with any disputed amount and any related finance charges and mail a correction notice to the consumer. *Id.* §226.13(e). After resolving the inquiry, the creditor may not report the amount as delinquent if the amount remains unpaid and the creditor receives further notice from the consumer that any portion of the amount is still in dispute.

This is only a brief summary of the extensive procedures mandated for all open-end creditors under federal law. All information that such creditors furnish to credit bureaus has been subject to these billing resolution dispute procedures since 1974.

Another federal law, the Equal Credit Opportunity Act, also imposes obligations on creditors that furnish information to credit bureaus. Under the ECOA's Regulation B, a creditor must designate any new account to reflect the participation of both spouses, if applicable, and the creditor must furnish the information in a manner that will enable the credit bureau to provide access to the information in the name of each spouse. 12 C.F.R. § 202.10 (a) and (b).

In the event that a consumer disputes account history information for the first time when it appears in the credit bureau file, the consumer has the right under a third federal law, the Fair Credit Reporting Act, to have the credit bureau delete it if it cannot be promptly reverified by the creditor (FCRA § 611).

Thus, under current law, if a consumer contacts the creditor and disputes the quality of goods or services or disputes any amount shown on his or her bill, the creditor must investigate that dispute and either correct the information or, if the creditor's investigation does not resolve the dispute to the customer's satisfaction, the creditor must report the information as disputed. If the information is reported to the credit bureau and then disputed, the information must be reinvestigated by the credit bureau. The credit bureau must promptly contact the creditor and, if the information is found to be inaccurate or it is not verified by the creditor, the credit bureau must delete it from the consumer's file (FCRA § 611(a)). If the reinvestigation does not resolve the dispute, the consumer has the right to file his or her own statement setting forth the consumer's version of the dispute and that statement or a summary of it must accompany any future credit report that contains the disputed information (FCRA § 611(c)).

In addition to the above procedures that are mandated by federal law at present, many merchants have voluntarily adopted procedures to improve their accounts receivable tape information systems and to augment their billing tapes with additional information, such as historical payment pattern data, to assist the credit bureaus in meeting their legal obligations. Credit grantors are redoubling their efforts to help credit bureaus match information to the proper credit bureau file by increasingly reporting social security numbers, change of address and change of account number indicators on their accounts receivable tapes. To assist the bureaus in resolving disputes, credit grantors are improving the response time for consumer disputes that are communicated to the credit grantor by the credit bureau. Timely and thorough responses are an important part of the consumer reporting industry's multi-faceted commitment to improve accuracy and maintain the integrity of credit bureau files.

Many credit grantors have developed an automated credit update process to improve their responses to customer inquiries received directly from consumers. This, coupled with the new automated consumer dispute verifications received from credit bureaus, will dramatically improve both response time and the effectiveness of the response. Also, when an inquiry is investigated, the results are

now normally reported to all three credit bureau networks, and a confirmation letter is sent to the consumer.

While we cannot say that every credit grantor responds to its customers' inquiries in an identical fashion, the above procedures have been widely adopted by credit grantors to comply with existing law, as well as when an inquiry is directed to the creditor, and to assist credit bureaus in providing a timely and meaningful response to a customer's inquiry when it is directed to a credit bureau.

Q.2. Privacy.—How well does the bill address privacy concerns that have been raised concerning credit reports?

A.2. We believe that the bill protects consumers' legitimate privacy concerns. More importantly, the privacy of consumer reporting agency files is assured under *existing law*, because consumer reports may not be obtained unless the recipient has a legitimate business need for the information and the recipient first certifies that fact to the credit bureau (FCRA §604(3), §607(a)). Thus, whether the issue is furnishing information by a consumer reporting agency that is identifiable with a particular consumer, or prescreening credit bureau files, we believe that existing law satisfactorily addresses consumers' privacy concerns.

Since certain individuals who purport to speak for consumers have asserted that an invasion of privacy occurs when prescreening takes place, we wish to comment specifically on that subject. Whether the purpose of the prescreening is to offer a credit card or to offer to sell goods or services, no person receives the consumer's file as part of the prescreening process. Only a computer-to-computer match of characteristics supplied by the creditor/seller takes place. No "inquiry" shows up on the consumer's file as the result of it having been prescreened, and a different creditor cannot know that the consumer's file has been prescreened when making its creditgranting decision. The consumer will, however, learn who prescreened the file should the consumer seek access to the file. No credit bureau file is furnished back to the creditor or is given to other third parties as a result of the file being prescreened.

All that results from prescreening is that consumers who do *not* qualify for the offer have had their files scanned by a computer and those consumers, whose identity is unknown to the creditor, do not get the unsolicited offer. Those consumers have not had their privacy invaded, in the sense that information about them has been furnished to a third party, and their only loss is that they do not get an unsolicited opportunity to receive credit or purchase goods or services. They are, of course, always free to apply for the credit plan of their choice and in so doing, as a rule, their full credit bureau file will be reviewed. Those consumers who *do* qualify for the prescreened offer merely receive a solicitation that they are free to accept or ignore.

Prescreening permits creditors and direct marketers to save costs by targeting offers to those consumers who will qualify and also those consumers who are more likely to desire to receive such a solicitation. Indeed, a prohibition against prescreening for direct marketing purposes (proposed in one House bill) would not reduce the volume of unsolicited mail. To the contrary, it would *increase* such

mail because direct marketers would be forced to mail to a larger base of consumers rather than the current practice of mailing offers selectively. Prescreened solicitations can result in a much higher response rate than that which results from a general direct mail promotion, which often is less than one percent. Thus, prescreening effectively reduces the volume of unsolicited mail.

From the consumer's perspective, restrictions on prescreening are not needed to protect their privacy. For those consumers who do not wish to have their files scanned by a creditor or by a direct marketer, they have the opportunity today of opting out of the process by contacting the credit bureaus. That is all the privacy protection consumers need.

While we do not see the need to amend the FCRA, if Congress should enact a law on this subject, we endorse S. 783's inclusion of direct marketing as a permissible purpose of prescreening, we do note that the bill's limitation that only the consumer's name and address may be furnished for direct marketing purposes is unnecessarily restrictive. The absence of a telephone number would effectively preclude telemarketing efforts. The absence of certain demographic information would also hamper segmentation that is essential in direct marketing efforts. There is no invasion of privacy or consumer abuse that warrants a different rule when prescreening to solicit for credit and when prescreening to solicit the purchase of goods and services. In both cases, the only restrictions should be that a firm offer must be made and that the information furnished pertaining to a consumer not identify any particular creditor or other business.

Q.3. Privacy.—The bill strengthens current law by prohibiting employers from accessing their employees' credit reports without obtaining their *general* consent. The House version of this legislation would require *specific* consent *each* time an employer wants to look at a report. Which provision makes more sense and why?

A.3. We believe that the approach to this subject found in S. 783 is by far more appropriate. We also note that authorization to obtain a consumer report after obtaining the employee's general consent is found in one of the two principal House bills, H.R. 619, which is based upon H.R. 3596, the bill approved by the House Banking Committee in 1992. As you point out, the other House bill, H.R. 1015, would require that the consumer's authorization be obtained each time in a separate document.

We believe that current law is effective to protect the rights of prospective and current employees. However, if additional legislation is deemed necessary, a provision mandating general consent to obtain reports on current employees should be adopted because it is the more balanced and practical approach.

To require employers to obtain separate consent by the employee each time before a report could be requested would greatly hamper an employer's operations, it would substantially delay the personnel management process, and it would have a chilling effect on this type of legitimate inquiry. Moreover, obtaining separate consent could engender needless concern on the part of an existing employee because in most instances no adverse action will result from the employer's inquiry. If legislation is deemed necessary, the pro-

posed requirement that an existing employee be given the opportunity to see the consumer report and dispute any adverse information in it *before* any adverse action is taken by the employer provides full protection to the employee from a potentially unfair decision that is based on information in a consumer report.

In sum, the requirement that separate specific consent be obtained each time that a report for employment purposes is obtained would be burdensome for employers and unnecessary for existing employees in view of the bill's provision prohibiting adverse action being taken until after the employee has had the opportunity to respond to any derogatory information in a consumer report.

I hope that the above answers are fully responsive to Chairman Riegle's questions. If there are any additional questions, or if we can be of further assistance, please let us know.

COMMENTS OF DEAN WITTER, DISCOVER & CO.

Dean Witter, Discover & Co. appreciates the opportunity to comment on S.783, "The Consumer Reporting Reform Act of 1993."

This legislation is of vital importance to Dean Witter, Discover, & Co. because of our extensive involvement in the granting of consumer credit, especially through credit card lending. The Discover Card, our principal consumer credit product, is held by nearly 40 million consumers throughout the United States. We also are a large issuer of "private label" credit cards for other companies. Because consumer credit reports are an important source of the data we use in determining whether to extend credit, Dean Witter, Discover & Co. has become one of the largest users of consumer credit reports, as well as a large furnisher of information about consumer credit account usage to consumer reporting agencies. Legislation that may affect the accuracy or completeness of this information, or that affects the duties of those who furnish information to credit bureaus, is of great concern to us.

S.783 contains many provisions beneficial to consumers. (A summary of these is attached.) The bill significantly strengthens existing provisions of the Fair Credit Reporting Act relating to the accuracy, completeness and privacy of information about consumers in the files of consumer reporting agencies. It adds new consumer protections in areas not currently addressed by the FCRA, such as credit prescreening and the use of credit bureau information for marketing purposes. At the same time, the bill generally recognizes the needs of credit grantors for understandable standards that are compatible with existing systems and procedures. Unfortunately, the bill contains several features that we feel must be changed: the absence of a State law preemption provision, overly-broad creditor liability language, and unworkable State enforcement procedures. We hope that changes will be made in these provisions so, as in past years, we will be able to support this legislation and work for its enactment.

Congressional testimony on consumer credit reporting and media coverage of this issue often focuses, understandably, on credit reporting errors and the negative consequences to individual consumers that can result if errors are not corrected. It is sometimes easy to lose sight of the fact that consumers are truly the beneficiaries, not the victims, of the consumer credit reporting system that now exists. This system permits credit applications to be evaluated and approved in minutes or seconds, not weeks or months, thereby increasing consumer convenience and access to credit. It allows applicants' creditworthiness to be evaluated on the basis of objective facts—the individual consumer's previous credit experience—rather than on assumptions or subjective determinations about the individual's likely performance as a credit customer. And because it reduces the cost of offering consumer credit (e.g. by making it unnecessary to obtain references from employers or other creditors that have dealt with the consumer), the credit reporting system facilitates the provision of credit at more favorable terms.

The benefits to consumers of readily-available credit information must be kept in mind as proposed amendments to the FCRA are considered. Retaining these benefits is as important a goal as addressing the accuracy and privacy of consumer credit information. As previously stated, several of the provisions of S.783 might jeopardize this objective, and should be amended or deleted from the bill.

Duties of Furnishers of Information

Among the other requirements which S.783 imposes on furnishers of information to consumer reporting agencies is the obligation to refrain from furnishing information that the person "knows or should know" is incomplete or inaccurate (Section 111(a)(2)). This language might appear to be of little consequence, but in fact it makes a fundamental change in the scope of the Fair Credit Reporting Act. It would, for the first time make credit grantors liable under the statute for making errors, even unintentional and unknowing ones, when reporting information to consumer reporting agencies. We believe that the ultimate effect of this change will be to make credit reports less, not more, complete and reliable. Such a result would benefit neither consumers nor credit grantors.

While the purpose of this provision may be to impose liability only for intentional or negligent errors, its impact is profound because no standard is provided as to when credit grantors "should know" that they have reported inaccurate information to a credit reporting agency. Moreover, the bill empowers Federal and State officials to interpret this standard and to enforce it in Federal or local courts across the country. This, potentially, can result in a multiplicity of different—and inconsistent—interpretations of credit grantors' duty to avoid reporting information they "should know" is inaccurate or incomplete. For example, one interpretation might be that a credit grantor "should know" that a reporting error has occurred whenever

a consumer has disputed a credit card bill. Another interpretation might be that a series of complaints by customers about billing or credit reporting errors indicates that the creditor "should know" that other errors are occurring. A third interpretation might be that a single consumer complaint about billing or reporting errors triggers this knowledge and the corresponding duty to search for errors and delete them from consumer files. Still another reading of the requirement might be that credit grantors "should know" that errors might occur if they fail to implement specified procedures to detect mistakes (file sampling, inside audits, independent audits, etc.), and that the failure to utilize such procedures triggers liability under this standard.

Similarly, conflicting interpretations might arise concerning the reporting of "incomplete or inaccurate" information. Does this term cover immaterial errors (an incorrect date for an opening or closing of an account, for example), or is it limited to material errors of the kind that might motivate another creditor to deny credit? Given the millions of credit transactions that are reported each month by large creditors, the scope of creditors' potential liability is important. S. 783 authorizes the meaning of this term to be developed in multiple jurisdictions at the urging of multiple enforcement authorities, a procedure unlikely to result in the clarity that is required.

As these examples illustrate, the imposition of liability for reporting errors and the authorization of multiple enforcers for an uncertain standard will lead to confusion as to credit grantors' obligations—and potential liability—under the FCRA. This will lead some credit grantors to reevaluate the amount or the kind of information they report to credit bureaus. Faced with potential liability, some creditors may report information less frequently. Others may reduce the type of information they report (e.g. reporting charged-off accounts only, rather than reporting on monthly payment activity). And there may be some who will feel that the potential risks of reporting are outweighed by the potential liability, and may stop reporting altogether. While the extent to which creditor liability will diminish reporting cannot be predicted, it is important to remember that credit reporting is a voluntary activity, and that not all credit grantors are participants in it. It cannot be assumed that credit grantors will continue to participate in the future if the risks of doing so are increased by legislation. Of course, decisions to reduce the volume or frequency of data reported would have the effect of making credit reports less valuable as a true indicator of a consumer's credit history. The supposed benefits of imposing liability on furnishers of information must be weighed against this risk.

In determining whether consumers would truly benefit if credit grantors were made subject to liability under the FCRA, it is important to remember that there are existing incentives that motivate credit card issuers and other credit grantors to provide accurate and complete information to consumer reporting agencies. These incentives are as compelling as the threat of an enforcement action. First, the information reported about each customer to a credit reporting agency is the same information that is used to prepare the periodic account statement that is sent to the customer. If errors appear on these statements (e.g. charges erroneously posted to an account; payments made but not reflected on the statement) the customer is made aware of them and has an opportunity to have them corrected. Indeed, credit card issuers have a legal obligation—under the Fair Credit Billing Act provisions of the Truth-in-Lending Act—to resolve billing errors, and consumers may collect damages under that law if credit card issuers fail to comply. (In contrast to S. 273, which would make card issuers liable for reporting erroneous information, the Fair Credit Billing Act makes issuers liable for failing to investigate and resolve errors, but not for making them.)

Competitive considerations and the need to be responsive to customers also make it imperative that account statements are accurate. Errors and disputes about them can result in losing a customer if they are not addressed promptly and completely. This gives credit card issuers a strong incentive to avoid billing errors, to correct errors that are brought to their attention, and to avoid reporting erroneous information to credit reporting agencies. Credit card issuers have developed internal controls and procedures to achieve these goals. Issuers also have an obligation to their shareholders and other constituencies (e.g. purchasers of securities which are backed by credit card receivables) to maintain records that accurately reflect the status of consumer accounts. Since this information is based on the data which is reported to consumer reporting agencies, the procedures that promote its accuracy also improve the accuracy and completeness of information that is furnished to credit bureaus.

Finally, furnishers of information have long been involved in voluntary inter-industry efforts to improve the accuracy of credit reporting information. For example, along with other credit card issuers, Discover Card has worked with consumer re-

porting agencies under the auspices of Associated Credit Bureaus, to improve the format by which information is reported and to encourage creditors to report account histories in a consistent manner. Recently, we have been involved in the development and testing of an Automated Dispute Resolution System which is scheduled to become operational later this year. (This system will replace, with a computer-based format, the existing paper-based system by which credit grantors advise consumer reporting agencies of the results of their investigations of information disputed by consumers. This system will speed up the investigation of disputed information, and ensure that corrections to previously-reported data are communicated to the three major credit bureaus, even when only one bureau has received a consumer dispute notice.) Efforts like these, made because they make good business sense and improve relationships with customers, have enhanced the accuracy and completeness of consumer credit reports.

In short, existing dispute resolution mechanisms under the Fair Credit Billing Act and the FCRA, coupled with marketplace incentives to report information accurately and completely and to improve the credit reporting process have been successful in encouraging credit grantors to accurately report information to consumer reporting agencies, and to quickly respond to requests to investigate and correct disputed information. This success is reflected in the fact that information reporting errors attributable to creditors (as opposed to mistakes made by credit bureaus in compiling that information) are rarely the focus of consumer complaints. The case has simply not been made that the imposition of liability on credit grantors for mistakes in reporting information would improve the accuracy or completeness of this information. On the other hand, changes in the existing liability provisions of the FCRA could lead to an overall reduction in the accuracy and completeness of consumer credit reports. Such changes should not be made.

Preemption

Like other credit grantors operating in a multistate market, Dean Witter, Discover & Co. can best serve its customers if the legal standards under which it must operate are uniform across the Nation. Uniformity reduces costs and compliance burdens by standardizing disclosures, prescreening requirements, dispute resolution procedures and other obligations. Uniformity eliminates consumer confusion that can result from multiple or inconsistent notices, error resolution procedures and other consumer protection requirements.

In the past, we have supported amendments to the FCRA, even when they imposed significant new compliance obligations on creditors, because they were coupled with language that preempted State law, providing assurance that only a single set of rules would apply. We are disappointed that S.783 abandons this approach and does not contain language preempting any provisions of State law.

Uniform requirements governing the furnishing of information to consumer reporting agencies and the use of consumer credit reports benefit both credit grantors and consumers. Consumer credit is not a local business. Increasingly, consumers have relationships with creditors from distant States, so the information in a typical consumer credit report is compiled from sources from many States. Moreover, consumers have become increasingly mobile. They expect that credit will be available to them as they move from State to State, an expectation that can be best met if consumer reporting agencies can readily compile data from distant sources, and credit grantors can readily provide information about consumers to credit bureaus without regard to the consumer's current State of residence. Consumer awareness of their rights with regard to credit reporting is also facilitated by requirements and disclosures that do not change when the consumer moves from one State to another.

Inconsistent State-by-State standards for credit reporting can impede the flow of information necessary to make informed and timely decisions when a customer applies for credit, and can complicate the process of resolving disputes about the accuracy and completeness of credit bureau files. For example, if one State permits information about past due accounts to be reported for 7 years, while another State limits the obsolescence period to five years, credit bureaus and credit grantors must devise methods to comply with the differences, and a consumer's credit application will be evaluated differently when he or she moves from the first State to the second. If one State requires disputes about credit information to be resolved in 30 days, and another State mandates a 20-day period, different compliance programs and notices must be developed to account for the variations. If one State permits creditors to make "prescreened" offers of credit only to consumers who have agreed in advance to be prescreened for such purposes, while another State permits prescreening to consumers who have not "opted out" of inclusion on such lists, offers must be customized to meet local requirements.

While there might be some advantage to encouraging State variations in an area where there are no Federal requirements or only minimal standards, this is not the situation with consumer credit reporting. The Federal standards are already comprehensive, and they would be made more rigorous by the new requirements of S. 783. Moreover, the Federal requirements (and any amendments to them) apply in every State, including the significant number of jurisdictions which have never adopted their own credit reporting laws. Thus, the enactment of a comprehensive Federal standard coupled with preemption of State laws does not deprive consumers of significant benefits or protections. It merely limits the States' ability to enact marginal variations in the Federal requirements (e.g. different time periods for compliance, different penalties for non-compliance, differently-worded disclosure requirements, different formats for explaining how information about consumers is reported and used). Such differences are of little value to consumers. They are more likely to burden consumers with confusing disclosures than to enhance consumer understanding and substantive rights. The compliance burdens and administrative expenses they will impose on credit grantors will ultimately be borne by consumers.

Credit reporting is an interstate business. Consumers and credit grantors alike benefit from uniform standards and regulation. If there are gaps in the standards established by the Fair Credit Reporting Act, they should be filled by amendments to that law that will be applicable everywhere. While there may be merit in authorizing States to enforce uniform standards, there is no need to encourage the States to create different or additional requirements.

State Enforcement

During the 102nd Congress, proposed amendments to the Fair Credit Reporting Act preempted State credit reporting laws in recognition of the interstate nature of the consumer credit industry and the need for consistent, nationwide, credit reporting laws. At the same time, the bills authorized State enforcement of the Federal requirements. S. 783, in our view, adopts what might be called a "worst of both worlds" approach: it does not preempt State laws (implicitly encouraging the States to adopt their own standards), but authorizes State enforcement of the Federal standard. We believe that a retention of State enforcement authority is appropriate *only* if substantive State laws are preempted.

If Congress makes a determination that there is a need to encourage State regulation of consumer credit reporting, it would seem to follow that the role of State enforcement officials should be to enforce the standards that their State legislatures enact. If a State determines that there is no need to develop State standards and to devote State resources to enforcing credit reporting requirements, State enforcement authorities should not become involved in the enforcement of the Federal law.

Unfortunately, S. 783 encourages the creation of both multiple standards and multiple enforcement. State officials would be able to enforce their own State laws, the Fair Credit Reporting Act, or both. Moreover, the bill does not require that State enforcement be coordinated with enforcement actions commenced (or planned) by Federal authorities, or even that State officials notify the Federal authorities that they have commenced an action under the Fair Credit Reporting Act. Nor does the bill require that State enforcement actions under the FCRA be commenced in Federal court.

The likely result of the State enforcement provisions of S. 783 will be uncertainty as to the law's requirements and how they will be enforced. National enforcement policies (e.g. determining which cases are appropriate for suit and which warrant consent order negotiations or settlement) cannot be pursued if local authorities are free to make their own determinations. Thus, for example, an Assistant State Attorney General could file suit (or sign a consent agreement) with a national company that was under investigation by the Federal Trade Commission, without the FTC's consent or knowledge. The need for established interpretations of the law's standards would similarly be impaired by authorizing State and Federal enforcement in Federal and State courts. For example, a State enforcement official might urge a local court to adopt an interpretation of the FCRA's error resolution, prescreening or other standards that differs from those utilized by the FTC's Credit Practices Division.

The need for close coordination of enforcement between Federal and State officials exists even if State substantive laws are preempted and the State officials are authorized to enforce Federal requirements. But where, as in S. 783, there is no preemption of State laws, State enforcement of the Federal standards, in addition to State requirements, is bound to cause confusion and legal uncertainty. Congress should reject this approach.

Conclusion

S. 783 contains many features that would be helpful to consumers and deserve enactment. However, the issues of preemption, credit grantor liability and State enforcement impair what is otherwise beneficial legislation. We urge the Committee to address these deficiencies and turn the bill into one that can be supported by all affected parties. We look forward to working with the Members of the Committee in the development of legislation that will truly further the common interest of consumers and credit grantors in improving the credit reporting system.

Summary of Principal Consumer Protection Provisions—S. 783

Disclosures to Consumers

- Detailed disclosure of consumer rights under FCRA required whenever creditor, employer or others take "adverse action" (as broadly defined in S. 783).
- Free disclosure of consumer credit report following reinvestigation of disputed information.
- Disclosure to applicants for credit of information furnished to consumer reporting agencies and frequency of such reporting.
- Disclosure to accompany all "prescreened" credit offers concerning source of information and consumer's right to "opt out" of future offers.
- Notice to consumers whenever disputed information is "reinserted" in consumer's file.
- Credit bureaus required to disclose detailed information: e.g. identity of recipients of reports, businesses which made prescreening inquiries, consumers' FCRA rights, etc.

Prescreening

- All prescreened credit offers must include a firm offer of credit.
- Consumers have right to block inclusion on all prescreened lists by using national toll free telephone number.
- Information which users of prescreened lists may receive is restricted.
- Users of prescreened lists must notify consumers of "opt out" mechanism.

Error Resolution

- Credit bureaus and furnishers of information subject to statutory timetable for investigating disputed information.
- Furnishers subject to statutory obligation to avoid reporting incorrect or incomplete information, to notify credit bureaus upon discovery that inaccurate information had been furnished, and to disclose when information reported to consumer reporting agencies is disputed by the customer.
- Consumers have right to have "relevant information" considered by creditors and consumer reporting agencies.
- Credit bureaus required to report accounts closed by the consumer as such.

Employment

- Provision of reports to employers or prospective employers is restricted.
- Before credit report may be obtained, employee must receive disclosures about use of reports and consent to such use.
- Adverse action cannot be taken against employee unless employee has opportunity to respond to information in report.

Other Provisions

- Increases civil and criminal penalties for violations of FCRA.
- Extends FCRA requirements and potential liability to furnishers of information to consumer reporting agencies.
- Imposes extensive new obligations, and potential liability, on "credit repair organizations."
- Establishes uniform method for calculating the length of time delinquent information may be reported.

TESTIMONY BY ROSARIO A. FIORANI, JR.

LOBBYIST, THE CONSUMER AFFAIRS LOBBY

Mr. Chairman, Members of this Committee, my name is Rosario A. Fiorani, Jr. I am a Lobbyist with The Consumer Affairs Lobby ("Lobby"). The lobby was founded on the principles and for the purposes that Consumers Make A Better America. For

this reason, our motto is, "Consumers Make for A Better America." We¹ are a consumer lobbying group that was formed to assist consumers in matters of consumer interest such as seeking legal counsel for consumer problems, researching credit practices, investigating suspect application processes, or notifying lenders of the various problems consumers have with credit and with credit bureaus. We are a non-profit consumer research and investigative group relying upon public funds, donations, and contributions to remain in operation.

I want to thank the Chairman and the Committee for this opportunity to provide testimony on behalf of all consumers who are unable to provide such testimony to this Committee themselves and comments from the consumers concerning the many shortcomings of the current Fair Credit Reporting Act which is the basis for the illegal acts by lenders against consumers. For these reasons, I am here this morning to address you concerning this serious consumer problem, which has plagued American consumers, your constituents, over the past two decades.

The Lobby applauds Congress' valiant efforts to rectify and remedy the many flaws within the current FCRA by enacting the stricter law, S.783. This bill will close-up the many loopholes within FCRA.

INTRODUCTION

Today's consumers are less ignorant of the importance of their credit records than they were years ago. This newly acquired knowledge surfaced after numerous and unexpected denials of credit by credit companies, which resulted in the consumers' embarrassment and humiliation by such unexpected refusals or rejections. Today's consumer, in going about everyday life, must make purchases or acquisitions of items of substance or value (such as a new home mortgage, credit application, car loan, or a college education loan). Today's consumer must also learn, and learn quickly, what are his duties, responsibilities and most of all rights in the credit process.

The current FCRA hinders the consumer's ability to learn what credit information is in his credit file. He is uncertain of which credit problem, if any, he has that prevented him from obtaining credit. Today's purchasing power is rooted firmly in the concept and practice of credit. Without credit, the consumer, your constituent, is unable to buy or borrow anything. In this way, credit discrimination divests the individual of the constitutional right to life, liberty and the pursuit of happiness. In this way, above all others, credit discrimination, and more importantly, the laws condoning it, is unconstitutional and must be stopped.

Since the enactment of the Fair Credit Reporting Act in 1971, the inconvenience of obtaining and maintaining credit has become a horror and a nightmare for the millions of American consumers. Because of this nightmare, consumers have experienced loss of job, loss of credit, and even loss of home. Millions of consumers, through no fault of their own, have been labeled by lenders and credit bureaus as "tax deadbeats," "bad risks," "delinquents," and "late, overdue, or tardy payers" in making payments to their credit accounts. All this is due to the problems raised by our current credit reporting system.

Since the 1980's, every purchasing adult must have credit in order to conduct, perform, purchase, repair, and be self-sufficient in today's social and economic settings. From the early 1960's, our banking system has made considerable strides forward and vast improvements in the way that they issue or grant credit to consumers. Simultaneously, banks have made it extremely more convenient for their customers to interact with the bank after hours, such as through automatic teller machines (ATM), and purchases of gasoline, groceries, and many other items from other merchants via an ATM card, or the bank's own credit card.

However, because of the data-specific nature of the complicated technologies involved in providing such services to the consumer, the consumer, instead of being aided in everyday life, is instead left frequently frustrated, humiliated, depressed, and most of all, angry at the credit industry, specifically, credit bureaus. These credit bureaus collect information dealing with the purchasing habits and trends of every individual utilizing credit. It is upon credit bureaus that credit lenders rely to determine whether a consumer is a "safe or unsafe bet" or credit risk. Should the credit bureau make a mistake, more, should it make the mistake and not realize it, the consumer can be and is denied credit through no fault of his own.

¹The words, "I" and "we" are used throughout the testimony to express the views and intentions of us, and the consumer. Since I am providing the testimony, the views stated are not going to be solely my views. When I use the word, "we", I mean "we, all people who are consumers in someway."

The mistake can be as small as a transposition of numbers or letters. But that transposition of characters, to the computers processing the credit transactions, can be the difference between two very different people. For example, let me take two imaginary individuals, John Smith and John Smits. John Smith has an excellent credit record and nothing to hinder his obtaining credit. John Smits, on the other hand is an ex-convict with a documented history of several credit delinquencies and frauds. Should a credit bureau, any credit bureau—and there are three, ever confuse the two men in any way, John Smith would find himself in a credit quagmire, while John Smits in a credit haven. The two men will have switched credit privileges, through no effort or willingness of their own. Their credit fates rely wholly on the credit bureau and then the credit lender.

The point, Senators, is this: credit bureaus are not infallible. They do make mistakes. That fact alone is a tolerable one. What makes the situation intolerable for and hostile to the consumer is the difficulty in removing information from a credit file that is inaccurate, false and potentially damaging. More, credit lenders should not be allowed to grant credit to one individual and not to another based on information that has nothing to do with one's credit history. Specifically, they should be required to grant credit to every American, commensurate with his ability to repay the allowance.

Between the initial or solicited credit application, consumers have been delayed in their application process, lied to by the bureaus and lenders, had credit information about the consumer falsified, had derogatory credit information manufactured by lenders, and been told by credit bureaus that certain (and derogatory) credit information, though untrue, is, according to them, "accurate and correct and that it cannot be changed."

One horror story concerned a certain lender (name omitted), who relied heavily upon a credit bureau report despite the contrary credit information that the consumer supplied. The lender refused to grant credit because of the false, inaccurate and manufactured credit information found in the consumer's credit file.

Such situations and scenarios are true to life and consumers have sought the assistance of the Federal Trade Commission (FTC), complaining that consumers attempting to borrow money from certain lenders are conspired against by those lenders with the credit bureaus in the denying of a loan or credit account.

BACKGROUND TO CHANGE THE FCRA

On June 6, 1991, the public, in the form of hundreds of angry, violated consumers and the FTC congregated here in Washington to present their complaints, documented evidence, and oral testimony to the House Subcommittee concerning illegal activities engaged in by credit reporting agencies. These hearings were broadcast by the print and audio-visual media around the country. Leading the media foray was the Washington Post's article, "Public Turns the Tables on Credit Bureaus." The article tells of the illegal conduct carried on by the credit bureaus against consumers' credit files. The illegal activities were stated as those of the credit reporting agencies.

The presented evidence and information were so overwhelming that nearly immediately after the hearings, credit reporting agencies suddenly "got a conscience" and began intensive policy reviews. The credit reporting agencies' self-examination was far too late, for, not far behind, was the FTC's, Consumer Affairs Division. It was still gathering and seeking out any illegal activities from the hearing evidence which would lead to a future indictment of a large, well-known credit reporting agency, TRW, on five civil charges resulting from their illegal activities. Those acts directly resulted in TRW being convicted by a consent decree.²

Among the overwhelming additional evidence were false credit reports, out-dated credit information, adverse credit information, and thousands of complaints about prescreening provided to the Subcommittee concerning the way credit reporting agencies presently conduct their businesses. Additionally, lenders and credit bureaus are jointly responsible for the contents of credit file information because lenders gather the credit information on the consumer from practice; credit bureaus maintain and disseminate that material on the consumer until it is requested later, by the client lender, on consumers. This makes the lender legally responsible for mistakes within the consumer's file. With the enactment of this bill, the lender and

² Because the FTC does not have strong criminal powers, TRW can bargain their guilt by using a consent decree. A consent decree is a form of a judgment, by the court, and entered into the record with the approval of the court which cannot be set aside without the consent of the parties. This is a typical example of a "slap on the wrist" in comparison to a more strict form of criminal punishment that should be imposed under the FCRA.

the credit bureau will be held equally responsible, for the contents and release of any false, inaccurate, misinformation in a credit file.

BRIEF SUMMARY

Unlike our colleagues who testified earlier, our Lobby group strongly favors this bill, S. 783, with only minor modifications in the items specified below. We would like to see a clearer, more specific description of credit discrimination within many of the sections; such as section 101, Adverse Action. Our Lobby's desire is that this bill clarify the definition and meaning of "credit discrimination"³ and set penalties against lenders⁴ for that form of discrimination. Currently, S. 783 makes references to a form of discrimination. The term needs to clarify for the consumer its actual and intended meaning within S. 783, as applied from the initial credit application (initiated by the consumer, to the lender, and between the lender to the bureau, back to the lender, and back to the consumer). Additionally, if a consumer is denied credit on the basis of a falsely "bad looking" credit report or solely on the judgment of the lender, then our Lobby must have that credit process clarified in S. 783 for the consumer's benefit.

All consumers want their Congress to hear their cries for help and demand that their Congress enact S. 783 so that consumers will be protected. They want Congress to enact a law that will allow them the capability to do what they should rightfully be able to do within today's society. This includes making any purchases, on credit, without detrimental setbacks or prolonged delays between the credit application and the issuance of the card, loan, or grant.

The second item of strong concern to consumers is the use of credit reports. Consumers want S. 783 to hold the use of reports by both lenders and the bureaus to a stricter standard. The third item concerns the practice of prescreening. This issue is interwoven with the use of credit reports, as well as the dissemination of such credit reports.

Item four deals with compliance. Our opponents do not want further compliances because they claim that it would be too costly to their operations in both cost and procedural areas. Our opponents also want this Committee to hold off any enactment until all of the FTC's enforcement, Consent Agreements are in place with the bureaus. Our Lobby believes that current FCRA law eliminates many of the main parties who hide behind the bureaus and use the bureaus as "paid shields."

I understand that the FTC is the enforcer of FCRA and will be the same for S. 783. What the consumer needs to know is that when there is a problem, how swiftly will the enforcement process work *for the consumer in his time of need*.

Items five and six, obsolete and disputed information is of paramount concern to consumers because of the extreme consequences that can result from having such information in the credit file. Maintaining information that is false, adverse, mixed, manufactured, or just out-dated is extremely damaging to the consumer's credit and must be abolished. There is great concern over the bureaus' being allowed to maintain this information long enough for some or most lenders to have received the information. In the many scenarios that are played out across America each day, lenders and bureaus have subtly passed out obsolete credit information which in turn have influenced a lender's judgment against the consumer.

Our Lobbying group has come across many lenders, such as Discover, American Express, Citicorp, CitiBank, Montgomery Wards, and Sears, as well as other major corporations that use this tactic to discriminate against consumers. When our Lobby contacts those lenders, many, perhaps intentionally, fail to answer us. Others respond with so-called threats that our claims of credit discrimination are defamatory and libelous. However, when we show them the facts and situations, they cease further contact with us because we are able to uncover their criminally and civilly illegal activities. Many later respond that, we, a representative of the consumer, cannot prove anything; and that the law allows them, the lenders, to discriminate against consumers on this, and other bases.

In addition, regarding disputed credit information, many bureaus and some lenders, have consistently reaffirmed the same inaccurate, incorrect, or manufactured credit information time after time. This is true even after the consumer notifies the credit bureaus of the incorrect information.

³This term, as used by our Lobby, means the denial of any credit, loans, or money, for personal uses, by any lender, creditor, or merchant, with the intent to discriminate against the consumer for any reason where that reason is based solely on past or present credit files, or history.

⁴The term used throughout will mean any business that is in the business of loaning money for a return, or for the purposes of making a profit on that money loaned. The term, may also be interchanged with the term, "creditors" as used by other testimony.

Currently, our Lobby in conjunction with the FTC, is in the process of correcting credit information within several credit files from Equifax. The information in question concerns Equifax's continuous return of false information that was to have been removed under Title 11, section 524(a)(1), of the Bankruptcy Code. In that particular Code and section, any judgments, collection attempts, or liens that are repeatedly entered on a credit record, or that are made a part of the consumer's credit history are null and void upon the discharge of a consumer in a bankruptcy proceeding. Equifax Credit Information Services has continually refused to eliminate adverse, false, inaccurate, and misleading credit information from many consumers files. Our letters to Equifax have been met with responses such as "(name of consumer omitted), the information that the (consumer)⁶ disputed has been reinvestigated and is determined as being correct. That credit information must remain in the credit file."

Other consumers have notified us that a discharged bankruptcy, annotated in Equifax's credit file, has remained within their credit records for more than twelve years. This information alone prevented one consumer from re-establishing credit and from obtaining new credit, even though the law clearly states that bankruptcy is not to appear on any record after ten years.

In these circumstances, what can the consumer do under S.783, to punish more swiftly the lenders and bureaus for their violations of current FCRA laws or S.783? This question leads me to the subject of civil liabilities under S.783. The consumer and I would like to see some modification of S.783; specifically, regarding the dollar amounts for penalties and administrative penalties that are imposed against the bureau be increased. We agree fully with the need and imposition for stronger enforcement actions too, along with the use of increased monetary awards, as well as punitive penalties. However, S.783 must be modified in accordance with the respective damages that have been inflicted on consumers, their reputations, families, friendships, and even their neighbors. These consumers later learn that they cannot obtain any credit because of derogatory credit information that is in their credit file, spawned from a personal or business financial disaster.

Another example is concerned with that of the separated couple, Mr. and Mrs. Consumer. One spouse has left the other, causing an immediate inability in either party to obtain immediate credit, or financial support because of the current separation. They are both denied their credit because their separation represents derogatory credit information in the credit file, or that they do not have any available funds, or the house is in foreclosure proceedings. In such a scenario, what will S.783 do for the consumer who has suffered great personal and material loss due to an inability to obtain "emergency credit" to assist with a sudden and unexpected disaster?

Moreover, if any consumers need to obtain property on credit, a necessity for life, or need to have such property repaired, also a life necessity, they should not be prohibited from making the credit purchase merely because of what a credit report states. Credit purchases should not require the consumer to experience every conceivable emotional agony, suffering, physical distress, and costly pain, in order to accomplish a legal and simple task. Whether that specific credit purchase involves the buying of a car, a home for the family or self, traveling to work, or obtaining a life-necessity item, the ability to acquire the items or services must not be hindered unjustly. Credit **must** be given where credit is due.

This capacity will provide consumers with the ability to make credit applications and force lenders to judge properly credit applications without serious setbacks or any prolonged postponement between the application and the issuance of the credit that is applied for.

I look forward to working with this Congress and its staff in forging this legislation for the consumers of America, your constituents. We, the consumers, will seek out those lenders who are responsible for our nightmares and horrors over the past two decades that have occurred on Credit Street USA, by urging Congress to hold the lenders legally and financially responsible for their actions.

For Congress to do its part, it must pass S.783 to provide consumers with the desperately needed remedies so as to prevent these horrors and nightmares in future. I must respectfully insist that Congress enact S.783, with some revisions, which will accomplish those necessary results.

⁶ Our Lobbying group has been a firm supporter of confidential credit information on consumers. These consumers have strongly requested that their identities be held in confidence and not be provided. In this case, we are using the generic term, "consumer." For these reasons, I do not maintain names of consumers within any of our correspondence. We attempt to use only numbers as an identifier.

RELATIONSHIP BETWEEN THE LENDER AND THE BUREAU

In order for Congress to fulfill its responsibility, it must be aware of the many obstacles and relationships, both subtle, hidden, and privately conducted between lenders and the credit bureaus. These relationships can hinder this Committee's action and duties to the consumers of America.

1). Congress must be aware of the duties of the lenders within society. What lenders can do to assist the consumer, versus, what lenders actually do to consumers and against consumers in the making or breaking of credit, and working for or against the consumer.

2). Congress must be aware of the credit bureaus' duties to the consumers first; and then the responsibilities that the credit bureaus have in making, compiling, maintaining and reinvestigating consumer's complaints on lender's submissions of false, inaccurate, and manufactured credit information that is not accurate.

3). Congress must also be aware of the "ways of the relationship," customs of the trade, that exist on the surface, that the public sees daily, and below the surface, that consumers and the public do not generally see occurring everyday.

4). Congress must also know that lenders have increased their costs to certain consumers and not to others. They allow some consumers to have certain specific benefits regarding special services while denying those same services to ostensibly like consumers. Congress must also understand that many lenders are a multi-million dollar operation and that costs are not, or should not, be thought of as causing harm to the lenders, who will pass those "unfair" costs on to their customers.

5). Congress must become cognizant of all of these forms of activities that occur in today's society between the major three credit bureaus and lenders.

6). Congress must also pay particular attention to the activities of thousands of lenders who pay the credit bureaus for their services, and are then able to pass off the liabilities on to the credit bureaus, the lender's sole responsibility of all of the illegal activities that eventually result to consumers.

ADVERSE ACTIONS

One issue in S. 783 concerns retaining any adverse credit information within the consumer's file. It also is when the agency willfully, and sometimes intentionally, refuses to delete such adverse and false credit information from the file. This includes credit inquiries that have expired, or were placed there by the bureau intentionally. Any inquiry over two years old that continues to appear in the credit file as an inquiry must be eliminated under current FCRA law. However, we want any inquiries that are false, inaccurate, or that were maliciously placed in the file, to be removed immediately upon the request of the consumer. Another aspect concerns adverse information which is "outdated," such as a judgment, bankruptcy, collection liens, or information that is connected to any of the above. These items should also be covered under the language of S. 783. Outdated information having to do with judgments, bankruptcies, etc., must be eliminated if the final adjudication of a bankruptcy, and either the single item, or a group of items, stem from a bankruptcy discharge.⁶ Under Title 11, section 524(a)(1), any judgment, collection, liens, or items charged off to profit or loss, is null and void, and is not to be in a credit report. Also, if that item were listed within the bankruptcy, it must be eliminated. This currently leads to many of our continuous volleying with Equifax Information Credit Services.

Equifax has continually refused to eliminate, after repeated requests by us, on behalf of consumers, that this information is unlawfully in the report, and is to be removed promptly. We have submitted every copy of our request to FTC, but we have not received any responses from FTC to date.

Another very important item FTC wanted to prevent from occurring was any employee being discharged from employment because that employee had filed bankruptcy. Title 11, section 524(2) established, by the Bankruptcy Act of 1984, states that no Federal employee, or any other employee shall be discharged because he or she has been discharged in a case before this Court. Under the 1973 Bankruptcy Act, one provision specified that no consumer shall be treated unfavorably because he or someone he associated with, had filed a bankruptcy under chapter 7, and has been denied a "fresh start."

⁶Bankruptcy Code section 524(a)(1) states: (a) "A discharge in a case under this title—(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharged of such debt is waived,"

This was done by many employers who discovered that a potential employee had filed bankruptcy before he or she intended to hire the employee.

The objective of these Congressional hearings is to close the existing loopholes in both the FCRA and the ECOA and to request this Committee to change and amend those problems that plague the public concerning these Acts, as currently written.

CONSUMERS WANT CIVIL LIABILITIES AGAINST LENDERS AND THE BUREAUS

An excerpt from the Equal Credit Opportunity Act states:

"... While the Equal Credit Opportunity Act prohibits discrimination in the evaluation of credit applications, it does not define "discrimination." Regulation B202.6 (b) sets out very specific rules as to what a creditor can and can not do in evaluating applications for credit. Practices mentioned in Regulation B may have a discriminatory effect. Therefore, even if a creditor follows the complex pattern of specific permissions and prohibitions, that creditor is still in violation of no discrimination standard in section 701."⁷

The 14th Amendment of the Constitution states in Section 1: "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."⁸

BANKRUPTCY, THE LAW DOES NOT DISCRIMINATE

In 1776, our Founding Fathers were far ahead of their time when they included an article in the United States Constitution, taken from an old English law. This article would later provide the country with the basis for the policies and procedures to operate and conduct business. Upon its completion, that clause was called the Commerce Clause and became known as Article 1, Section 8 of the United States Constitution.

By the time the Constitution was ratified in 1789, the Commerce Clause had been—expanded to include a section that would protect the common person from creditors. That section of the Commerce Clause was called the Bankruptcy Clause, located at Section 8, Para. 4.⁹ of the Commerce Clause. This section is the foundation and basis for our Bankruptcy Law today. Article 1, Section 8, would not be amended until nearly two centuries later, in 1978, and would become known as the *Bankruptcy Reform Act of 1979*. In 1984, the *Bankruptcy Reform Act of 1979* was amended and was renamed *The Bankruptcy Act of 1984*. There have been no subsequent changes to the bankruptcy laws since the 1984 Act. As of April 1, 1992, the Senate Judiciary Committee has begun selecting members to revise the current bankruptcy laws by selecting a blue ribbon commission to review the bankruptcy codes and current laws. Society and government make matters worse by discriminating against certain forms of work and by not granting credit for housing.

Under the original bankruptcy law of the eighteenth century,¹⁰ The Statute of Bankruptcy was the bankruptcy law during the colonial period in America. The first bankruptcy law adopted by the United States Congress was the Bankruptcy Act of 1800 which closely followed the Statute of Bankrupts. Voluntary bankruptcy did not become a part of American law until the Bankruptcy Act of 1841.¹¹

Under this act, the debtor was allowed to start over fresh without harassment from creditors in society. That view of bankruptcy portrayed by our society of a decade ago is contrary to the original intent of Congress when the law was first written. The society of one to two decades ago frowned on bankruptcy by making the bankrupt individuals feel ashamed, embarrassed, humiliated, stigmatized, and subjected them to near permanent refusal of further credit. However, in spite of society's views over the last two decades, today's society's views are changing, mostly due to the current economy, and to the ease with which consumers now acquire new credit.¹² One Washington Post article observes,

⁷ *Consumer Law In A Nutshell*, 2nd. Ed., Epstein, David P., and Nickles, Steven H., West Publishing Company, St. Paul, MN, 1981.

⁸ 14th Amendment of the United States Constitution.

⁹ 14th Amendment of the United States Constitution.

¹⁰ Statutes of 4 Anne, c. 17 (1705), and 10 Anne, c. 15 (1711), that the law allowed the granting of a discharge to the bankrupt of the debts owing at the time of bankruptcy.

¹¹ *Bankruptcy Law*, 2nd. Ed., Robert L. Jordan and William D. Warren, Foundation Press.

¹² "Personal Bankruptcy Filings Rise for 1992," Washington Post, March 18, 1993.

"... a result that experts attributed to the recession's fallout and to a trend in which people are less embarrassed than in the past to file for bankruptcy... and partly because people have the ability to get credit even after going into bankruptcy... I've seen the whole social attitude about bankruptcy change."... People realize now it's generally easy, and there is very little resistance given by creditors."¹³

The credit bureau and lenders generally do not care to know what the causes are for an adverse credit report; neither do credit reporting agencies explain their credit files to lenders on the consumer's behalf. Yet, few lenders are unwilling to provide a second chance to any "bankrupt consumer" for credit.

STATISTICS FOR A CHANGE IN THE CREDIT LAWS

The information that you are about to receive contains the numbers of persons who have had to file for bankruptcy from 1980 to 1990, with the figures being released for 1991. These statistics were compiled by the Administrative Office of the United States Courts. This data encompasses all the information on bankruptcy filings, but only for the last ten years, from 1980 to 1990. A handwritten estimation for 1991 was supplied to us by the aforementioned Administrative Office of the United States Courts, before the official release of the actual statistics were made available to the public for 1991.

Over the last twelve years, (1980 to 1992) nearly seven million Americans have filed for bankruptcy protection. The statistics show bankruptcies have risen continuously over the last ten years with nearly 800,000 bankruptcies being filed during 1990, 944,000, in 1991, where bankruptcies rose 47.5 percent for only three of the seven courts that are located in Maryland, DC, and Virginia;¹⁴ and for 1992, 971,517 bankruptcies were filed. An increase of 2.9 percent over 1991, much smaller an increase since 1991's increase of 20.6 percent over 1990.¹⁵

Virtually the entire increase for 1991 came from Chapter VII's and Chapter XIII's; although 92 percent of the bankruptcies for 1992 accounted for Chapter VII cases. A Chapter VII bankruptcy consists of a total elimination and discharge from all the debtor's debts. A Chapter VII bankruptcy is a bankruptcy that only involves an individual. This type of bankruptcy cannot consist of businesses, partnerships, or corporations. The theory here is that an individual is allowed to "start fresh." Any other type of organization's property is completely turned over to the creditors to divide.

Only the discriminated consumer will know the precise feeling of dishonor resulting from a bankruptcy. Only the discriminated consumer will know how difficult it is to overcome the stigma of a bankruptcy on a credit record.

Do not forget that these numbers represent the actual lives of people who have had serious, unexpected financial problems. Such people needed to have immediate relief from their obligations to their creditors who call, harass, threaten, and berate them, even to the point of suicide. This is all because of a bankruptcy filing and society discriminating against that person. It is not business as usual for the consumer under such circumstances.

SOLUTIONS AND REMEDIES TO THE FCRA

In order to provide for these consumer needs, S. 783, must furnish consumers with the remedies they must have to prevent further atrocities and nightmarish ordeals. I must respectfully insist that Congress enact S. 783, with these serious concerns and suggestions in mind, to achieve these imperative goals for consumers.

To accomplish this, Congress must first be aware of all that is occurring in society today among the three major credit bureaus. Congress must also pay close attention to the activities of the thousands of lenders who pay the credit bureaus for their services, and who then pass off the costs of those services to the credit consumer.

Systematically, the consumer must come first within these arrangements under this bill, S. 783. Under this bill, S. 783, respectively, the total blame for all of these consumer nightmares over the past 22 years should not be laid only on the backs of the credit bureaus alone. Although both the lenders and credit bureaus work together jointly, they are jointly responsible for their actions toward and against consumers.

¹³ Personal Bankruptcy filings Are on the Rise, Washington Post, March 18, 1993, by Michelle Singletary.

¹⁴ Washington Post article, "Area Bankruptcy Surge Puts Pressure on Courts—Filings Increased 47.5 Percent in 1991 for MD, DC, and VA."

¹⁵ Washington Post, by Michelle Singletary, "Personal Bankruptcy Filings Are on the Rise," March 18, 1993.

Nevertheless, credit bureaus have been made the scapegoat organization, solely responsible, with little mention of the actual but hidden culprits: the credit lenders. The credit bureaus may be the primary and exclusive chaperons of credit data, but that data is heavily relied upon by lenders for their credit decisions. It is the credit lender, who, relying solely on a third party's information, makes the decision to grant or not grant an individual credit. It is the credit lender and his or her personal biases which actually make the final decision. Therefore, lenders should be equally responsible for their involvement within the credit reporting design. Perhaps they do not manufacture or retain false or damaging information in a credit file; they do rely on such files, whether the information is true or not, to make their decisions in granting credit.

Moreover, lenders are just as responsible in any scenario where a credit applicant's request for credit requires the applicant, or consumer, to seek out lenders for a credit purchase. This Congress, therefore, should not exclude the lender's responsibility from any provisions that hold the credit bureau responsible for their criminal actions.

Additionally, lenders and credit bureaus are jointly responsible for the contents of credit file information because lenders gather the credit information on the consumer from practice. Also, credit bureaus maintain that credit information on consumers and disseminate it upon request of the client, the lender or a specific consumer. Reasonably, this makes the lender equally responsible for mistakes within the consumer's file.

With the enactment of S. 783, lenders and credit bureaus will be, as they should be, held equally responsible for the credit contents and the release of any false, inaccurate, misinformation within a credit file.

Congress should assist consumers in understanding easily S. 783. Congress must first clarify the new bill so that all consumers and the organizations that must enforce this law will know how quickly the FTC must act against those lenders and credit bureaus who violate this law. To do this, Congress must modify and concentrate the two bills, S. 783 and H.R. 1015 for the exclusive benefit of all consumers. This requires making the final law stronger and more enforcement-powerful for consumers and for the benefit of consumers. The law must also hold lenders and credit bureaus who intentionally circumvent the current FCRA law, accountable to the Government and the consumer, jointly and separately, for their, lenders and bureaus, violations of S. 783.

Presently, lenders and bureaus make it very difficult for any consumers to discover what exactly is within their credit files. The current FCRA prohibits releasing the consumer's own credit and medical information to the consumer, until proper identification procedures have been met.

Additionally, the bureaus use credit codes that are used between lenders and credit bureaus specifically. This creates a very difficult period for the consumer wanting to understand why he was denied credit. First, he must understand what those codes mean so that he can specifically attack the main problem within his report. Furthermore, lenders and credit bureaus intentionally make it difficult for consumers to correct their files within any specified time frames because each instructs the consumer to contact the other for that specific correction or elimination of adverse and incorrect credit information.

For Congress to discharge its responsibility on behalf of consumers, both bills must be combined and modified to close up all the loopholes. When those loopholes are sealed, lenders and credit bureaus can neither sidestep nor circumvent the law and cause problems to consumers' credit files. Under the current laws, lenders and credit bureaus can cause consumers' problems with their employers, neighbors, and families. However, under S. 783, with some modifications, will provide a better remedy for consumers and will provide penalties against both culprits, the lenders and credit bureaus, without allowing them an escape from civil and criminal punishments for their crimes against consumers.

On behalf of consumers, I respectfully request that lenders be held to the same standard of reporting as credit bureaus are. This concerns the passing along of credit information that is provided by another bureau and then disseminated back to a third lender. This should include an increase in the current civil fines. Another penalty also should be added which can be used by the FTC and the Department of Justice. Those penalties should be more strict in reimbursing the consumer for any loss that results from the loss of needed credit or loan.

PRESCREENING: INVASION OF PERSONAL PRIVACY

Another area of extreme concern involves prescreening of credit reports for lenders and marketing distributors. This area is very important to our organization, and

to me, because we receive from consumers hundreds of letters that claim that such-and-such a consumer has won such-and-such a prize. But, before claiming the prize, he or she must send in some money to get their so-called prize. Most of this junk mail comes from bureaus who release credit information to certain distributors who solicit, and even swindle consumers through not-necessarily-true advertisements for products.

An ingredient of prescreening that bothers many unknowing consumers is the intrusion by lenders and marketers, who subtly invade the consumer's credit life seeking any information that can be used later to solicit the consumer into buying their products. Some consumers complained about marketers who advertise false products and false awards of prizes that cannot be won. These prizes have included land in the Everglades for three times the normal price for land. Many consumers value their personal and financial privacy; and a part of their personal information is their credit file.

This process, if continued, infringes on the consumer's privacy under the U.S. Constitution. Because of the complexity of the subject matter, several factors must be considered before a final decision can be made regarding prescreening practices. S. 783 allows for the consumer to opt out of any future prescreening that occurs through lenders and marketers.

However, nowhere in the bill are there penalties for the so-called lender who wants to move his or her financial growth upwards by increasing his or her secured credit cards and savings accounts. This practice occurs more often when lenders request certain specific credit data and receive that data indicating that Mr. and Mrs. John Doe have three gold cards, two homes, and five other credit accounts, all with high credit limits. The lender then solicits Mr. and Mrs. Doe to obtain more credit from this lender.

The opposite is also true when ABC lender wants to increase its financial worth. They solicit Mr. and Mrs. James Doe through the local credit bureau and find out that Mr. and Mrs. James Doe have just filed for bankruptcy protection. This lender promises to refinance their loan by paying off their home mortgage. ABC lender changes its mind and does not loan James Doe the money, causing James Doe to lose his home to foreclosure because of ABC's lack of legal responsibility to the Doe's. The consumer loses out, but the law states that the lender's tactics are not illegal because the lender claims that some loophole in the law allowed it to change its mind. There was not any bite in the current law that makes it mandatory to grant the credit once the consumer has been solicited and has agreed to the terms of the agreement or contract.

Another negative aspect of the prescreening process involves the seeking out of consumers who have "alleged" garnishments, liens, judgments, and collections against them of which the consumer is unaware.

The current FCRA, involving the practice of prescreening allows lenders to seek out unsuspecting consumers; this, without the consumer's knowledge or protection. The end-result of the credit information being supplied to the lender is either incorrect, inaccurate, or mixed up by the lender, and is later remanufactured by the bureau as it is passed on to a third lender. That credit information is also mixed up as that credit report information is received from another credit bureau.

Who recompenses the consumer when the consumer's privacy, dignity and civil rights are violated? What are the penalties that currently exist, or that will exist if this bill becomes law, to protect the consumers from anymore violations? The penalties are now less than they should be, and far less than the costs, trouble, inconvenience, and aggravation that it will cause the consumer who attempts to correct the problem when it suddenly appears unbidden and hits him like a hurricane.

If prescreening is regulated, the consumer should have the absolute right, privilege, and sole authority as to how much information is disseminated to the lenders and marketers before any credit information is ever released to non-credit entities.

Congress has never introduced any bills, publications over the last 10 to 15 years concerning credit discrimination. This form of discrimination was not one that Congress wanted to focus on to eliminate. Credit discrimination affects everyone in some way or another. Because it does affect our lives, the problem extends even to family and friends. This problem has destroyed countless families, friendships, reputations, and innumerable prosperous careers over the last 20 years. Credit discrimination is considered "illegal by law," but there is no specific provision within the law that excludes it from being condoned by society, at present.

This form of discrimination has caused thousands of consumers emotional trauma and it leaves a psychological stigma, which can remain with the consumer for many years, because of their feelings toward the adverse credit reporting on them. Additionally, credit discrimination can also cause psychological fatigue, emotional humiliation, and be mentally destructive to the individual's health and well-being. Some

consumers do seek counseling for the effects, after realizing that they cannot obtain credit now. Furthermore, consumers do not feel comfortable within society, and are shunned by society because of their inability to obtain credit.

It is for these reasons, that desperate consumers seek out and sometimes find illegal ways to overcome the credit discrimination that hounds them. Many of these consumers eventually seek credit counselors and credit repair organizations. Congress has outlawed some forms of discrimination, but has failed to eliminate this form of discrimination by lenders—the discrimination I label credit discrimination.

Under existing FCRA law, many consumers do not have direct access to the exact credit report that is being provided by the credit reporting agency to the lender, and many lenders solely rely only on the credit reporting information that is provided to them by the agency. Another change in the new law is that the agency can no longer view a consumer's complaint about their report as frivolous if the agency cannot verify the suspected credit information. The old law left the decision of whether the merit of a complaint about a report strictly up to the agency. Many consumers found the false and inaccurate information still fully intact in their credit report. Another change in the law gives the FTC stronger enforcement powers. The old law prevented FTC from issuing anything more than a cease and desist order. The new law will allow FTC to bring criminal charges and levy a heavy fine. This new legislation will greatly assist the consumer by providing the FTC the power to punish properly the credit reporting agencies. This new law will make it mandatory that an agency provide to the consumer within 30-days, after release of any information to a prospective lender on the consumer, a letter stating where the report went, the reason(s) for the denial, and what remedies the consumer has and within what period. The current response period is now 60 days. The new law will cut that time in half.

Before, a consumer would never know that his or her career, reputation, or future was ruined by the agency merely because of credit disclosure to his employer.

The FTC's immediate needs are to enforce the consumer laws, to prosecute and penalize any lenders and credit reporting agencies that violate those laws with a more stringent enforcement power than FTC has now, and to investigate any form of credit discrimination against any consumer without hindrance. Without Congress providing the FTC stronger enforcement action against any future violators, disclosure of misinformation cannot be properly prosecuted. The FTC has previously stated their position on these matters nearly every year, before this Committee and past subcommittee hearings. They have expressed their concerns over the lack of enforcement powers, the lack of stiff penalties for violators of the Acts, and how the credit reporting agencies are not properly following the requirements and guidelines of the Acts concerning consumer report distribution.

Also, we, the consumers, should be concerned about the newest computer technologies that enable a person operating a computer to tap into a system and intercept or collect anyone's financial information. A serious problem that we all face is financial information being sent over any telephone lines, airwaves, radio waves, microwaves. Every kind of telecommunications media available today is available to computers in some way or another. Obviously, Congress must take swift, decisive action to protect the individual's constitutional right to privacy.

These are only a few of the many concerns that the consumer has regarding financial privacy.

CONCLUSION

With the enactment of S. 783, Congress will have protected consumers with a law that will secure the loopholes in the current FCRA, preventing lenders and credit bureaus from crawling through. Also, with the enactment of S. 783, Congress will have offered consumers the additional protection of civil and criminal penalties for credit agencies violating S. 783. It will provide the consumer with the much-needed remedies which will allow stricter enforcement provisions for the FTC. With this law, S. 783, Congress will have tightened up the releasing of credit files to anyone who does not have the authority, or the need to receive credit information. Prescreening was a serious problem for consumers, but now, the closing-up of those holes within the credit process will make the lenders who receive credit information liable for how they handle that information in the future. Under S. 783, the consumer will be provided with a clarification of adverse credit information, allowing consumers to pursue legal action against lenders who violate Section 101.

Therefore, our Lobby supports this Congress' energetic efforts to enact this bill, S. 783, and for closing up the many previous loopholes that are within the current FCRA.

I thank the Chairman and Members of this Committee for their time and attention in this matter. I look forward to working with this Committee on future bills of this nature.

I will now answer any questions that you may have.

LETTER FROM D. BARRY CONNELLY
EXECUTIVE VICE PRESIDENT, ASSOCIATED CREDIT BUREAUS, INC.

JULY 2, 1993

Dear Mr. Chairman:

On May 27, the Senate Banking Committee held a hearing on S.783, The Consumer Credit Reform Act of 1993. I was pleased to be on one of the panels that was invited to testify before your committee.

Mr. Chairman, your letter inviting me to testify before the Committee stated that a large number of consumer complaints concerning credit reporting had been received by the FTC so I addressed that in my written testimony. However, the FTC is now questioning my statement which was based on information provided by that agency. Therefore, I would like to submit this letter for the record as additional background to ACB's FOIA request and the results.

During my testimony, I noted that Associated Credit Bureaus had filed a Freedom of Information Act request with the Federal Trade Commission in April of 1992. The findings of this FOIA request showed that, during the first quarter of 1992, there were 373 complaints filed with the FTC concerning the credit reporting industry. I testified, when annualized, this resulted in an 85 percent decrease in complaints reported by the FTC over the prior year. The FOIA figures are attached for your information.

Subsequent to your hearing and the release of the complaint figures, I was advised by David Medine, Associate Director for Credit Practices, that the FTC had not complied completely with the Freedom of Information Act request and ACB had not, in his opinion, received all the complaints and inquiries. If this is true, it has not, to this date, been confirmed by the FTC Freedom of Information Act officer responsible for compliance with the FOIA.

According to the last communication received from that office, ACB is in receipt of all complaints and the FOIA response is paid for and complete. Although aware of the results of the ACB study of the complaints, the FTC in testimony at your hearing failed to identify any error in the Commission's compliance with our FOIA request.

The FTC sent four separate mailings to ACB during the months of June, July, and August of 1992, to fulfill our FOIA request. On October 22, they submitted a final mailing which included "copies of the remaining accessible materials (complaints)" along with a bill for processing our request in the amount of \$5,605.34. We were advised by the FTC FOIA officer that we had been furnished copies of *all* complaints and inquiries as requested. The FOIA officer at the FTC never identified any material that was being excluded as permitted by the law.

Mr. Medine bases his conclusion that there were several hundred complaints omitted from the FOIA material on a computer listing of 2,024 complaints logged by the FTC during the first quarter of 1992. This listing is a codified accounting of each complaint received by the FTC. I have attached a copy of one of its pages as an example. The actual copies of the letters (which should have been included in the ACB FOIA request) have been destroyed in accordance with the FTC policy.

As we reviewed the listing, it was evident that it contained errors. Some complaints are listed as being entered in the log in 1991. Others have no date listed as to when they were entered. And some complaints were entered *before* they were received according to the listing.

In conversation with the FTC, we have been told that we have miscounted the number of complaints we had received pursuant to our FOIA request. They suggest that we actually have closer to 1,000 pieces of correspondence rather than the 578 we counted. The fact is that in many cases, the FTC's FOIA employee collated the multiple pages of a complaint and submitted them intact. Thus, in some cases we were simply verifying the FTC complaint count they sent us.

When ACB reviewed the complaints, we found that 35 percent of the correspondence had nothing to do with credit reporting. Instead, the letters concerned credit grantor issues, fraud, "900" telephone number services and miscellaneous other complaints. I have attached a representative sample of this type of correspondence which the FTC categorized as credit reporting complaints.

ACB has offered any interested parties copies of the complaints we have received from the FTC to allow them to verify our numbers. While ACB apparently has the only hard copies of the consumer complaints in question, no one has ever asked to look at them.

ACB's objective is not and has never been to audit FTC complaint totals and to argue over the validity of certain complaints. We expect the FTC to track consumer complaints and wish only to work in cooperation with the FTC to resolve any legitimate consumer problems.

ACB is concerned about FTC complaint totals because, once released, they become part of the public debate. Our experience with the FTC's accounting of complaints and inquiries has brought into serious question the dependability of records or statistics on complaints maintained by the FTC on any industry, not just those of us in credit reporting. It is clear that the Commission does not have a reliable system of maintaining a meaningful record of complaints and inquiries that can be utilized by businesses or Congress for improving performance.

We would hope that prior to any future release of such data, the FTC would review their complaints and complaint procedures to ensure they have exercised reasonable standards to ensure their accuracy. If not, the figures released serve no useful purpose in the public debate on credit reporting. Congress, consumers and the credit reporting industry must evaluate complaint totals with the certitude that they are extremely accurate. ACB has offered to assist the FTC in tabulating complaint totals.

We also would like to take a more active role in resolving consumer complaints to the FTC. Occasionally, the FTC regional offices contact our member offices to assist in resolving a consumer problem. We welcome that opportunity and suggest that the FTC do that more often. Rather than just keeping a questionable log of complaints and inquiries, consumers could then be helped in a meaningful way through interaction with the local credit bureau. We pledge our cooperation if the FTC wishes us to participate.

Thank you very much for allowing me the opportunity to comment.

FTC COMPLAINT REVIEW
FIRST QUARTER 1992

In April of 1992, Associated Credit Bureaus, Inc. filed a request with the Federal Trade Commission under the Freedom of Information Act. ACB asked for copies of all complaints and inquiries that had been filed with the FTC from January 1 through March 31, 1992, relating to credit bureaus. We received copies of that correspondence in October, 1992.

Following are the results of a study that was done to analyze the FTC complaints and inquiries. ACB did the analysis and we differentiated between those complaints that pertained to credit bureaus and those that dealt with other related issues.

Complaints About Credit Reporting

File Contains Inaccurate or Incomplete Information	180
Merged File Complaints	45
Failure to Reinvestigate Inaccurate or Incomplete Information	40
Not Told All Information in File	28
Information Retained Too Long	19
Not Furnished a Copy of File	8
General Complaints/Other	53
Total Complaints	373 (65%)

Letters in Other Categories

Credit Grantor Issues	128
1-900 Phone Charges	39
Fraud	18
Inquiries/Observations	5
Unreadable Duplicates	4
Not Enough Information to Classify/Other	11
Total Letters	205 (35%)
Total Credit Bureau Complaints and Other Letters	578 (100%)

EXPLANATIONS OF CATEGORIES

Credit Bureau Complaints

File Contains Inaccurate or Incomplete Information: Consumer states that information in the credit file is in error. References to incomplete information usually concerned a difference in the balance owed on an account.

Merged File Complaints: The files of persons with similar names, especially fathers and sons, were mingled.

Failure to Reinvestigate Inaccurate or Incomplete Information: When notified that incorrect information was contained in the consumer's file, the credit bureau failed to verify the data.

Not Told All Information In File: The consumer did not believe the file disclosure contained all the information that the creditor had obtained.

Information Retained Too Long: Consumer states that adverse information in the credit report was reported past the seven year statute of limitations (ten years for bankruptcy).

Not Furnished a Copy: Consumer claims the credit bureau did not supply him or her with a copy of the credit report when requested.

General Complaints/Other: Consumer complaints ranged from slow and discourteous service to a conspiracy to assassinate the consumer.

Letters In Other Categories

Credit Grantor/Collection Issues: The two most common complaints were harassment by collection agencies and dispute with creditors.

1-900 Phone Charges: Most of these complaints were directed towards fraudulent phone offers for preapproved bankcards.

Fraud: This category included a variety of issues relating to fraud, such as one person using another person's credit accounts fraudulently.

Inquiries/Observations: General comments by consumers, such as remarking that Social Security Numbers should not be used for identification purposes.

Unreadable Copies: Correspondence that was illegible or where the photocopy could not be read.

Not Enough Information to Classify/Other: Pages of the complaint may have been missing or it was unclear what the consumer was requesting.

Notes

If a letter contained a complaint against credit bureaus as well as other issues, it was categorized as a credit bureau complaint.

There were occasionally more than one copy of a complaint. This usually occurred when the consumer sent the same complaint letter to several people including the FTC, members of Congress and others. Congressional members forwarded the correspondence to the FTC for handling. In these cases, all the correspondence was consolidated and counted as one complaint.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

OCT 22 1992

As indicated, you may
Mr. Steven I. Fier
Vice President Government Relations
and Legislative Counsel
Associated Credit Bureaus, Inc.
1090 Vermont Avenue, N. W., Suite 200
Washington, D.C. 20045-4905

Re: Freedom of Information Act Request
Credit Complaints
FOIA Request No. 92-0294

Dear Mr. Fier:

This is in further response to your letter of April 13, 1992, in which you requested access to copies of all complaints and inquiries, from January through March 1992, concerning the credit reporting industry.

By letter dated June 19, 1992, you were granted partial access to those documents and informed that the accessible documents were being processed. On July 6, 20, and August 18, 1992, some of the accessible materials were provided to you. Copies of the remaining accessible materials are enclosed.

For purposes of determining fees incurred to process your request, you have been considered to be a "commercial use" requester, and, based upon document search, duplication, and review provisions of the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(ii)(I) and the Commission's Rules of Practice, 16 CFR 4.8 et seq., as amended, you are being charged \$5,605.34, minus your deposit dated May 8, 1992 for \$1,000.00, which leaves a balance due and owing of \$4,605.34. Please remit that amount at your earliest convenience, to:

Division of Budget & Finance
Room 766
Federal Trade Commission
Sixth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Payment may be made by check, money order, or MasterCard or Visa credit card. A billing statement is enclosed for your reference. Please refer to our Control Number 92-0294 when making your payment.

Mr. Steven I. Fier -- Page 2

As the Deputy Executive Director's letter indicated, you may appeal from the denial of information within thirty days from the date of this letter. Please refer to the Deputy Executive Director's letter for specific information related to the administrative appeal process.

If you have any questions about the way your request was handled or about the Federal Trade Commission's regulations related to the FOIA, please contact Franklin Musser on (202) 326-2411. He is the staff member most familiar with your request.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Keith Golden', followed by a horizontal line.

Keith Golden
Director
Information Management &
Dissemination Division

Enclosures.

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RGR ENTERPRISES

3637 Doyle Road
Baldwinsville, NY 13027
315-638-2492

January 30, 1992

Federal Trade Commission
150 William St. 13th Floor
New York City, NY 10038

Dear Sirs;

On November 8, 1991 I contacted Talking Balloons Inc. 6400 Atlantic Blvd., Georgia, and purchased a sample/demo pak of their product (\$24.95). After examining it and reading the accompanying literature I decided to order some of their Talking Balloons (\$356.50).

After receiving their product and attempting to sell it (to no avail) I called their salesman/representative Jeff and informed him that I would like to return the unused portion of the order and take advantage of their 30 day buyback guarantee. He then informed me that this was my second order, and the buyback was only pertaining to a first order. Jeff stated that the demo/sample was considered my first order, thereby I am not entitled to a refund.

In past experiences a demo/sample has never been considered as an order. In their literature they state "no refunds on merchandise that is not in resaleable condition". A sample must be used in order to operate it. This means they never had intentions of giving a refund. This also means their advertisement is totally misleading and they never intend to refund anything.

I did not receive literature on what was available for purchase until I received the demo/sample package, which included Policy Booklet & literature of what they had available for purchase. It was then that I made my first Purchase.

I beleive that I have been "HAD" by a shoddy Corporation who has a non-existing President sign their literature. When I requested to speak to Barry Davis, President of Talking Balloons I was informed that Mr. Davis is not the President. Then why was his name signed as President of the Corporation? I am still waiting for a return call from anyone with some sort of authority.

I would appreciate any assistance your office can give me in resolving this dilemma.

Sincerely,

Encl: Advertisement
Invoices
Company Policy & literature

NEIGHBORHOOD LEGAL SERVICES PROGRAM

(SERVICIOS LEGALES)
3616 FOURTEENTH STREET, N.W.
2ND FLOOR
WASHINGTON, D.C. 20010
(202) 726-1400

OFFICE OF THE DIRECTOR

682-2700

ADULT LAW UNIT

682-2700

LAW REFORM UNIT

682-2711

PRIVATE BAR NATIVE

682-2738

701 - 4TH ST. N.W.

May 20, 1991

Jan 15, 92 11:54 AM

NEG-800-000

1130 - ST - 1

288-1

1213 0000 - 0

678-2

1337 - 4 - 5

388-4

Ms. Jolynn Barry Butler
Chairman
Public Utilities Commission
180 East Broad Street
Columbus, OH 43266-0573

Informal Complaints and Public
Inquiries Branch
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
Suite 6202
Washington, D.C. 20554

Dear Sir or Madam:

I am writing this letter on behalf of [REDACTED] a client of Neighborhood Legal Services Program. [REDACTED] would like to file an informal complaint with the Federal Communications Commission concerning her recent dealings with McNally Financial Services, a company ostensibly providing low interest loans for its applicants. Specifically, [REDACTED] in response to McNally's television advertisement, called the company's 1-900 number for a low interest loan, and McNally subsequently charged her \$35.00 for the phone call, in addition to a \$55.00 application fee. Not surprisingly, she has heard nothing from McNally since November of 1990, when they sent her the latter of two postcards (copies enclosed).

During my background check of McNally Financial Services, I called the Ohio Better Business Bureau and discovered that consumers similar to [REDACTED] had filed over 100 complaints against the company. [REDACTED] and I believe that McNally Financial Services has been engaging in fraudulent business practices, accomplished in part by its use of the 1-900 number.

I have already filed a complaint, on [REDACTED] behalf, with the United States Postal Service concerning McNally's use of the mail system to collect its \$55.00 application fees. I would like to file a similar complaint with the FCC regarding McNally's

fraudulent use of the telephone lines and to request a refund of her \$35.00 telephone charge. I understand that this letter may serve as an informal complaint, and I have listed below the relevant addresses and phone numbers of the respective parties.

[REDACTED]
McNally Financial Services
28 Triangle Park Dr. Ste. 2801
Cincinnati, OH 45246
(513) 772-2353

also: 1232 W. Kemper Rd. Ste. 345
Cincinnati, OH 45240

Unfortunately, [REDACTED] did not keep records of the specific 1-900 number, but we are fairly certain that the number she called was 1-900-999-LOAN. I have similarly not been able to access copies of [REDACTED] bill from the local or long distance phone companies because they have "purged" their records since [REDACTED] made her call in May of 1990. However, I have enclosed copies of numerous documents sent to [REDACTED] by McNally; I hope they can be of assistance. Please contact me at the above number if you need any further information as well as with all developments. Thank you very much.

Sincerely,

Jenny Dyer
Jennifer Tyler
Legal Clerk

U. S. POSTAL SERVICE ROUTING SLIP		DEPT., OFFICE OR ROOM NO.	☐ APPROVAL ☐ SIGNATURE ☐ COMMENT ☐ SEE ME ☐ AS REQUESTED ☐ INFORMATION ☐ READ AND RETURN ☐ READ AND FILE ☐ NECESSARY ACTION ☐ INVESTIGATE ☐ RECOMMENDATION ☐ PREPARE REPLY
TO:			
1	FEDERAL TRADE COMMISSION		
2	WASHINGTON, DC 20580		
3			
4			
5			
FROM:		Postal Inspection Service P.O. Box 2217 Syracuse, NY 13220-2217	EXTENSION
DATE 9/18/91			ROOM NO.
REMARKS:			
Attached billing forwarded to you for appropriate action. Customer does not like the threats to their credit history. Individual who received this is as follows: 			

ITEM 6-13

(Additional Remarks on Reverse)

Aug 1976 (Formerly Form 18)

B/C

This is to inform you that your unpaid balance of
~~\$100⁰⁰~~ with "Hollywood Hotline" Fantasy
Phone Service will be submitted to all credit
agencies and will be an available part of your
credit history.



**HOLLYWOOD
HOTLINE**

C. Donnelly
9245 Reseda Bl.
Suite 433
Northridge, CA 91324

(818) 609-8778

9-7-91



TO: [REDACTED]

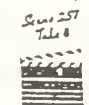
You made calls to our service on 1-6-91 and promised to pay 40 within ten (10) days.



Because you have chosen to ignore our numerous requests for payment, we find it necessary to collect the above amount due through our court system.



We will request a copy of your phone statement for the above date(s) from your telephone company showing a long distance call from your phone, and a collect call accepted to your number, (315) 497-0302.



That telephone record is all that is necessary for us to prove your liability for the above amount. You will be charged for all court costs, which may not exceed \$1,500.



If you wish to make restitution for the above amount, make your check or money order payable to: C. Donnelly.



We must have your payment, plus this letter in our offices within ten (10) working days.

Hollywood Hotline
Accounting Department
(616) 609-8778

Our service is based on trust. We trust you to be a responsible client.

© 1989 Hollywood Hotline, Inc. All Rights Reserved. CA 000001

C. DONNELLY
9245 Reseda Blvd., Suite 433
Northridge, CA 91324

COMMITTEE ON RULES
COMMITTEE ON THE BUDGET
SELECT COMMITTEE ON AGING
THE AGRICULTURE CAUCUS
CO-CHAIR
WHIP AT-LARGE



CONGRESS OF THE UNITED STATES
LOUISE M. SLAUGHTER
30TH DISTRICT, NEW YORK

1177
1424 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
202/225-3816

DISTRICT OFFICES:
311 FEDERAL BUILDING
100 STATE STREET
ROCHESTER, NEW YORK 14614
716/232-4850
TTY 716/454-4805
216 EAST MAIN STREET
BATAVIA, NEW YORK 14020
716/343-2524

March 12, 1992

Mr. Craig S. Brightup
Director of Congressional Relations
Federal Trade Commission
6 & Pennsylvania Avenues, N.W.
Suite 503
Washington, D.C. 20580

FEDERAL TRADE COMMISSION

RECEIVED
0016003
MAR 23 1992

OFFICE OF THE CLERK
CONGRESSIONAL COPIES BRANCH
WASHINGTON, D.C. 20540

Dear Mr. Brightup:

I am writing on behalf of my constituent, [REDACTED] regarding the release of Social Security Numbers for identification purposes. Enclosed is a copy of correspondence that documents this case.

I would appreciate your reviewing this correspondence to determine whether or not you can be of assistance to [REDACTED] in resolving this matter. Please notify me of the outcome through my District Office located at 311 Federal Building, Rochester, New York 14614. If you need additional information, please contact Carol Wittman at (716) 232-4850 or at (716) 343-2524; she is the staff aide who will be assisting me with this case.

Thank you for any consideration that you may give this matter. I look forward to your reply.

Sincerely,

Louise Slaughter
Louise M. Slaughter
Member of Congress

LMS/caw
Enclosure

2/9/92

FEB 11 1992

Louise Slaughter
3120 Federal Building
Rochester NY 14614

Re: Use of Social Security numbers as identifiers.

I have recently encountered a problem and as I do not have access to a law library, and even if I did I wouldn't know how to find the answer to my problem. I need to know the answer to this. Under what circumstances are business concerns allowed to ask for your social security number? I was recently denied a check cashing card from a supermarket chain because I refused to give them my social security number. This is a concern to me because with my bank account number, from my checks, and my S.S. No., anybody could access my banks instant access number and find out my checking account balance. It is my understanding that it is against the law for anybody to use the social security number for identification purposes. I realize it is necessary for the bank to have social security numbers as it is authorized by the tax laws for backup withholding purposes but the banks use this number as a personal identification number also for their telephone dial up information services. Is this use authorized? If it is, I feel this use should be prohibited. The banks over the years have developed security procedures and an ethics code so that I feel reasonably sure of their use of the number. But I certainly would not trust a supermarket with their large group of transient and teenage workers to be able to exercise this authority with any certainty of its confidentiality. I think in view of the increasing computerization of the nations records that social security numbers should be restricted to enforcement of the nations laws both tax and others necessary for the protection of our social services (such as finding absent child supporters). Other uses should be strictly prohibited and this should be communicated to the public, business users, and schools; both private and public, primary and secondary.

I realize there are some laws regarding this but as I stated at the beginning, I don't know how to find them. Any assistance would be greatly appreciated and attention to this would be appreciated when looking at areas in which you could do some good for the public in your function as one of our nation's lawmakers.

Thank you.

JAN 23 1992

January 14, 1992

Division of Credit Practices
Bureau of Consumer Protection
Federal Trade Commission
601 Pennsylvania Avenue
N.W., Washington, D.C. 20580

Dear Sir:

We are writing this letter to ask an appeal on a late fee (\$98.12) charged on our loan (Loan [REDACTED] with Loan America Financial Corporation (13500 North Kendall Drive, Miami, Florida 33186)). We sent in our December '91 mortgage payment on December 11, 1991 from San Diego, CA here to Miami, FL. Because the mail delay during the Christmas time, they told us it was received on December 17 instead of December 16 and a late charge was fined on our account.

We have asked them to waive this late charge but didn't get the answer. Please help us to resolve this problem. We have paid our monthly mortgages on-time since March 1989 with Loan America.

Thank you.

Truly yours,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12/17/91
 LOAN AMERICA FINANCIAL CORPORATION
 13500 NORTH KENDALL DRIVE
 MIAMI, FLORIDA 33186

LOAN AMERICA

DELINQUENT NOTICE

LOAN NUMBER	CDL CODE	MORTGAGE CODE	AREA OFFICE
[REDACTED]	1	719 13	00

REGULAR MONTHLY PAYMENT	ACCRUED LATE CHARGES
1,962.38	98.12

URGENT

IN ORDER THAT YOU MAY RECEIVE 1991 MORTGAGE
 INTEREST CREDIT FROM THE INTERNAL REVENUE SERVICE
 FOR 1991 INCOME TAX PURPOSES, IT IS IMPERATIVE
 THAT YOUR DECEMBER PAYMENT BE RECEIVED BY LOAN
 AMERICA SO THAT IT MAY BE CREDITED PRIOR TO 2:00
 P.M. E.S.T., DECEMBER 31, 1991.

March 13, 1992

To:

Credit Practices, Bureau of Consumer Protection
Federal Trade Commission
Room 500 IND. 6th Street and PA. Ave.
N.W. Washington, D.C 20580

From:

To whom it may concern;

I am writing you in concern about my credit status. I have been incarcerated since July of 1988, in the State Corectional Institution of Retreat in Wilkes-Barre, PA. I really don't know what my current credit is like and would like to check on it before I leave here. I had a few problems when I was out, but I really don't know if any bad credit was reported. Listed below is some information that might help you, help me:

Name:

S.S.#:

Last Address:

Address:

Any help that you may be able to give me will greatly appreciated. Thank you very much for you'r time and efforts.

Sincerley Yours,

THE WHITE HOUSE OFFICE

REFERRAL

1975

FEBRUARY 24, 1992

TO: FEDERAL TRADE COMMISSION

ACTION REQUESTED:

DIRECT REPLY, FURNISH INFO COPY

DESCRIPTION OF INCOMING:

ID: [REDACTED]

MEDIA: LETTER, DATED JANUARY 21, 1992

TO: PRESIDENT BUSH

FROM: [REDACTED]

SUBJECT: COMPLAINTS ABOUT CREDIT CARD PROBLEMS

FEDERAL TRADE COMMISSION
RECEIVED
001 3374
FEB 24 1992
OFFICE OF THE SECRETARY
CONGRESSIONAL CORRESPONDENCE BRANCH
WASHINGTON DC 20540

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN
TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, PLEASE TELEPHONE THE
UNDERSIGNED AT 456-7486.

RETURN CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE
(OR DRAFT) TO:
AGENCY LIAISON, ROOM 91, THE WHITE HOUSE, 20500

SALLY KELLEY
DIRECTOR OF AGENCY LIAISON
PRESIDENTIAL CORRESPONDENCE

ID #

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

O - OUTGOING

H - INTERNAL

I - INCOMING

Date Correspondence Received (YY/MM/DD)

92/1/25

Name of Correspondent: Mr./Mrs./Miss/Ms.☐ M: Mail Report

User Codes: (A) _____

(B) _____

(C) _____

Subject: Complaint about service
and phone

ROUTE TO:

ACTION

DISPOSITION

Office Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
	CoWals	ORIGINATOR	92/02/3	RL		92/10/1
	/ FTE	Referral Note:	R	RL		92/10/1
		Referral Note:				
			1/1			1/1
		Referral Note:				
			1/1			1/1
		Referral Note:				
			1/1			1/1
		Referral Note:				

ACTION CODES

- A - Appropriate Action
C - Comment/Recommendation
D - Direct Response
F - Furnish Fact Sheet
to be used as Enclosure

- I - Info Copy Driving Action Necessary
R - Direct Reply w/ Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES

- A - Answered
B - Non-Spec. Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE

- Type of Response = Initial of Signer
Code = "A"
Completion Date = Date of Dispatch

Comments: _____

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OSDB).

Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference ext 2592.

Dear Mr. President,

5. 1226
Y
11

Very truly yours,

[REDACTED]

[REDACTED]
[REDACTED]
January 21, 1992

Mr. Leslie Goodman
First Fidelity Bank
Newark, NJ 07192

Re: Master Card Account Number [REDACTED]

Dear Mr. Goodman;

I believe I have been treated unjustly by your bank! I have been a client for fifteen years and have never experienced anything as calous and rigid as you organization.

My husband, who was the wage earner in our family, passed away on October 6, 1989. Needless to say, our emotional and financial suffering has been overwhelming. I resumed his financial responsibilities, including Master Card, to the best of my ability. Recently, I called your bank to inquire about increasing my credit line. The woman I spoke to noticed that I said my husband has died and she noted that I should have called the bank about that, e.g. that there are policies regarding the death of a card-holder. She didn't specifically inform me as to what those policies are but she mentioned that I should not be responsible for payment. I also received a letter stating that my increased credit line request was being rejected for "Unsatisfactory credit performance". Mr. Goodman, I was unaware that I should have reported my husband's death. I struggled to pay Master Card and although I may have been a few days late on some occasions, I always tried to pay more than the minimum amount due. I did not receive a Master Card for the new year and when I inquired, I was told that the computers determine whether I was creditable and they have determined that I am not. They have contacted a credit bureau stating such.

I am a young widow with a son attending college. I do not receive any help from the Government and do not want anything that I am not deserving of. What your bank has done to me is extremely harmful to my future which was bleak enough without your help.

I would like to know exactly the policies concerning the death of a card holder and I would like to know if you can help resolve my problem and return my good credit back to me.

Sincerely yours,
[REDACTED]

cc: President George Bush
CREDIT DEPARTMENT, TRW Credit Data Corp.

201 555 3200



261

First Fidelity Bank
570 Broad Street
Newark, NJ 07102

201 555 3200

Phone - 201-565-6923

Pres. Leslie

Goldman

[REDACTED]

Jan. 13, 1992

Acct No: [REDACTED]

Dear John D Fosco:

After careful consideration, we regret to inform you that we are unable to comply with your request to increase your credit line at this time. The principal reason(s) for our decision is:

Unsatisfactory credit performance.

This decision was based in whole or in part from a credit report obtained from:

TRW Credit Data Corp
5 Sylvan Dr
Parsippany, New Jersey 07054
201-285-4840

You have the right under the Fair Credit Reporting Act to obtain and inspect a copy of this report by contacting the reporting agency.

Sincerely,

CREDIT DEPARTMENT

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because of all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is Controller of Currency, Administrator of National Banks, North Eastern District, 1114 Ave of Americas, Suite 3900, NY, NY 10036.

328 1596 1000

04140

15 Grand Park Blvd.
Athens, Ohio 45701
Ph. (614) 593-6101
Cable: JOPAT
Telex: 6162392992
Ohio Univ., Athens
Fax 614-593-6262 5175



Bank One of Athens, N.A.
Member United States Hispanic
Chamber of Commerce

January 10, 1992

JAN 23 1992

Office of Thrift Supervision
Consumer Affairs Division
Federal Trade Commission
Washington, D.C. 20552

Dear Sirs:

We are making reference to the home improvement loan ([redacted]) that we have with Fed One Savings Bank, in Wheeling, West Virginia, and to which we referred in our previous communication of November 25th, 1991, to the Federal Trade Commission. The case was referred to your office with the reference ([redacted]) in a letter dated December 18th, 1991.

We are enclosing materials that we received from the above Savings and Loan institution.

There are some areas related to the interest rate's structure of the loan to which we strongly object. In the cover letter of December 13th, 1991, forwarded to us by the bank, it is stated that "each day a simple interest loan accrues on the principal balance of (our) loan". When we took out this loan, this particular structure of the interest rate was not disclosed to us, and this is the first time that this matter is brought to our attention. The said statement-as it reads in the enclosed cover letter-was neither included in the Promissory Note, nor in the Disclosure Statement, for us to have a clear idea as to where we stood concerning the payment of the interest on the loan. At the time we signed the documents for the home improvement loan, we were told by House of Quality (the bank's client), that if we paid the amount financed-\$8,500-in less than the 10 years (the term of the loan), we would be saving on the payment of the interest-the "finance charges". According to the structure of the loan, and as we have found out when trying to accelerate payments, this doesn't happen to be the case. On a 10-year loan, at a 15% yearly rate, the total amount to be paid in interest on the amount to be financed (\$8,500) would be \$12,750, not \$16,455.60, as stated in the documents. Thus, if the statement expressed in the cover

Office of Thrift Supervision
January 10, 1992
Page 2

letter of December 13th, 1991 had been incorporated in the Promissory Note (Form 216) of August 27th, 1985, and in the Disclosure Statement (Form 146), we would have had a clear understanding of the structure of the loan, to guide us in our decision, and in all probability would have rejected the same, for the way it is interpreted by us now (as per letter of December 13th) is that the said loan falls within the framework of the Usury Laws. A 15% interest rate, per year, for a 10-year period is one thing; a 15% interest rate, that "simple" interest rate accruing interest on the balance, per day, per 10 years, is an entirely different matter-tantamount to compounding interest, and extremely costly. The structure, as conveyed by Fed One in the letter of December 13th, contravenes the contents of the Federal Disclosure Box, Form 146, insofar as the "Annual Percentage Rate-the cost of your credit as a yearly rate", and is misleading as stated in the Promissory Note, Form 146, (yellow underlining), as per cover letter of December 13th, 1991, to us. The statement should have been incorporated in the documents.

Thus, we really believe that Fed One, by issuing such a cloudy Promissory Note and Disclosure Statement is in violation of our rights under the Truth-in-Lending Act of 1968, as amended, which requires creditors to state the full cost of credit, and spell out how the full cost is to be computed. This methodology is absent in the original documents.

We would appreciate it if you would look into this matter and let us know.

Looking forward to hearing from you, we remain,

Sincerely,

cc: 7/12

FDIC

Federal Deposit Insurance Corporation
Washington, D.C. 20429-0000

Office of Consumer Affairs

(202) 858-2536

(800) 424-5436

January 6, 1991

Ref. No. [REDACTED]

Mr. Bradley G. Burns
2940 Rimrock Road
Billings, MT 59102

Dear Mr. Burns:

This letter is in response to your correspondence to the Federal Deposit Insurance Corporation.

The Federal Trade Commission has jurisdiction over the issue of concern to you. We are forwarding your letter to that agency for appropriate attention. The address of the agency is noted below.

Sincerely,

Janice M. Smith

Janice M. Smith
Director

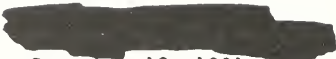
cc: Federal Trade Commission
Division of Credit Practices
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-3175

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December 19, 1991

TO WHOM IT MAY CONCERN:

If your office has jurisdiction please give the attached
letter your kind attention.

Thanks,



Att.

COPY

December, 19, '91

CHEMICAL MORTGAGE COMPANY
P.O. Box 341590
Worthington OH 43234-1590

Attn: Customer Service

Re: Loan [REDACTED]

Dear Sir/Madam:

I am very confused and I believe you owe me an explanation if not an apology.

In the first part of '91 I received notice (and a new coupon booklet) that my escrow account was short by some \$350,000+ (over double the amount of the original loan). I called your department and was told there indeed had been some mistake and I would receive a corrected audit which I NEVER received. What I did receive was a new coupon booklet with payments about \$5.00 higher AND a refund from the escrow account of \$200+. And no explanation nor audit. Confusing, isn't it? It gets even more so.

Last week I received in the mail, with no explanation whatsoever, a revised coupon booklet which has payments now some \$45 higher than the original ones. What is going on here? The taxes haven't risen in the last TWO (2) years and the insurance hasn't gone up very much.

Please provide me a complete explanation as to what has happened in this matter.

Sincerely,

[REDACTED]

cc: Consumer Affairs, F.D.I.C.
" " Office of Thrift Supervision
" " Securities and Exchange Commission

(406) area code
(406) 652-8155
- same number

- Called 6/17
O.K.
(he is a real
intelligent guy)

ISBN 0-16-041724-4



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